

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TTAB

In the matter of trademark application Ser. No. 78/668877  
For the mark LOS RIELEROS DEL NORTE  
Published in the Official Gazette on March 28, 2006

Federico Galindo

Opposition No. 91171111

vs.

Los Rieleros del Norte, Inc.

NOTICE OF APPEARANCE OF DAVID A. STALL AS  
COUNSEL FOR APPLICANT LOS RIELEROS DEL NORTE, INC.

David A. Stall hereby makes his appearance as counsel of record for

Applicant Los Rieleros del Norte, Inc.

Dated: February 16, 2007

Respectfully submitted,



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CERTIFICATE OF MAILING AND SERVICE:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in (an) envelope(s) addressed to each of the following:

Cheryl L. Hodgson  
Hodgson Law Group  
9606 Santa Monica Blvd., 3rd Fl  
Beverly Hills, CA 90210

Dated: February 16, 2007



David A. Stall

02-21-2007

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Ser. No. 78/668877  
For the mark LOS RIELEROS DEL NORTE  
Published in the Official Gazette on March 28, 2006

Federico Galindo,

Opposition No.  
91171111

Opposer,

vs.

Los Rieleros del Norte, Inc.,

Applicant.

PETITION OF APPLICANT LOS RIELEROS DEL NORTE TO  
DISQUALIFY CHERYL R. HODGSON AS COUNSEL FOR  
OPPOSER FEDERICO GALINDO

DECLARATION OF DAVID A. STALL

Applicant Los Rieleros del Norte, Inc. hereby petitions the Commissioner of Patents and Trademarks to disqualify attorney Cheryl R. Hodgson as attorney for Opposer Federico Galindo in this Opposition proceeding and to suspend further proceedings in this matter until a determination is made on this petition. Applicant's petition is based upon the following statement of facts and memorandum of law, as well as the exhibits attached hereto, including the Verified Complaint in the case of Fiesta Musical, Inc. vs. Los Rieleros del Norte, Inc., pending in the United States District Court for the Western District

of Texas in which Applicant's rights in the LOS RIELEROS DEL NORTE mark are placed at issue by plaintiffs, including Opposer Federico Galindo, the pro hac vice application of Cheryl R. Hodgson to appear as counsel in the District Court case, Applicant's subsequent motion to disqualify Ms. Hodgson from appearing in the District Court case, and the District Court's order disqualifying Ms. Hodgson from appearing as counsel for plaintiffs, including Opposer Federico Galindo, in the District Court case.

Ms. Hodgson had filed an Opposition to Applicants Motion to Disqualify, which at her request, was filed under seal per court order. Therefore Ms. Hodgson's Opposition is not included to provide her with the opportunity to control the content and submission format of any Opposition she chooses to file in this matter.

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## INTRODUCTION

In 2006, a federal judge disqualified attorney Cheryl R. Hodgson from representing Opposer Federico Galindo in Opposer's federal lawsuit against Applicant Los Rieleros del Norte, Inc. currently pending in the Western District of Texas. In the District Court litigation, Opposer Galindo--who is the former artist and business manager of Applicant and its shareholders, the musicians who form the Regional Mexican musical group "Los Rieleros del Norte"--is suing Applicant and its shareholders for trademark infringement and other Lanham Act causes of action.

The issues which led the federal court to disqualify Ms. Hodgson from representing Opposer against Applicant and its shareholders in the Texas case are equally applicable to this petition: Ms. Hodgson previously represented Applicant and its shareholders in matters substantially related to the issues related to the instant Opposition. Applicant therefore respectfully petitions the Commissioner to disqualify attorney Cheryl R. Hodgson as attorney for Opposer Federico Galindo in this proceeding. Applicant further requests that the Commissioner suspend the proceedings in this action until a determination has been made on this petition.

### STATEMENT OF FACTS

Applicant in this proceeding is Los Rieleros del Norte, Inc. ("Los Rieleros"), a corporate entity that offers musical services through its shareholders, musicians Eugenio Gonzalez, Alfredo Esquivel and Daniel Esquivel. Applicant Los Rieleros del Norte, Inc. was the owner of federal registration no. 2,150,780 for the service mark LOS RIELEROS DEL NORTE, which lapsed in 2005 due to their inadvertent failure to file the requisite Section 8 affidavit of continuing use. Following the lapse, there was no change in the ownership of the mark. Upon discovering the mark lapse, Applicant filed the pending application to register the service mark once again.

On February 23, 2006, Opposer Federico Galindo filed an application to register the service mark LOS RIELEROS DEL NORTE in international classification 041 for services of a musical group. Opposer is represented in that application by attorney Cheryl R. Hodgson.

On March 3, 2006, Opposer filed a verified complaint in a federal lawsuit filed in the Eastern District of Texas. (Exhibit 1, Complaint.) In his verified complaint, Opposer claims that his rights in the mark LOS RIELEROS DEL NORTE are superior to those of Applicant and its shareholders and seeks declaratory relief that he is owner of the mark. (Exhibit 1,

Complaint, pp. 8-11, ¶¶ 39-58.) Opposer also claims to have acquired his rights in the mark through an assignment from Manuel "Manolo" Morales, a former member of the musical group Los Rieleros del Norte and shareholder of Applicant Los Rieleros del Norte, Inc. (Exhibit 1, Complaint, p. 9, ¶ 42), and that the rights in the mark were the subject of an "oral" agreement between Morales his fellow shareholders of Los Rieleros del Norte, Inc. (Exhibit 1, Complaint, p. 8, ¶ 41.)

Attorney Cheryl R. Hodgson entered her appearance in the District Court case as attorney for Opposer Federico Galindo through an application to appear pro hac vice (Exhibit 2, Motion for Admission Pro Hac Vice), which was granted by the Court. (Exhibit 3, Order.)

Prior to assuming representation of Opposer Galindo in the District Court case and in this Opposition action, attorney Hodgson was the attorney for Applicant Los Rieleros del Norte, Inc. and each of its shareholders, including Morales, the individual from whom Opposer claims he derives his interest in the mark. The issues for which Hodgson agreed to represent Applicant and its shareholders included "Corporate matters including shareholder agreement." (Exhibit 4, Hourly Rate Fee Agreement, p. 1, ¶ 2.) After entering into the attorney fee agreement with Applicant and its shareholders, attorney Hodgson



discussed with her clients issues regarding Applicant corporation and the relationship of the shareholders and their obligations. (Exhibit 5, Motion to Disqualify, Appendix p. 2, ¶¶ 3, 5.) The prior engagement of attorney Hodgson by Applicant was never terminated and Hodgson continues to hold unearned retainer funds of Los Rieleros del Norte, Inc. (Exhibit 5, Motion to Disqualify, Appendix, p. 2, ¶ 4.)

Based upon the foregoing facts, Ms. Hodgson is in an unfair position of being privy to attorney-client confidences of the very parties that she now seeks to attack on behalf of her new client. Such a conflict is impermissible in any forum, be it a court of law or the TTAB.

As a result of the above facts, Applicant and its shareholders made a motion before the District Court requesting attorney Hodgson's disqualification on the grounds that her prior representation of Applicant and its shareholders was substantially related to the issues raised in the Complaint. (Exhibit 5, Motion to Disqualify.) In particular, Applicant and its shareholders objected to the fact that attorney Hodgson may be using confidential information gleaned in the course of her representation of Applicant and its shareholders to prosecute civil claims against them.

Attorney Hodgson filed her opposition to the motion to

disqualify under seal per court order. Accordingly a copy is not included herewith, leaving Ms. Hodgson the opportunity to control the content and filing format of any Opposition to this Motion to Disqualify.

Applicant Los Rieleros del Norte, Inc. filed its reply to the opposition of attorney Hodgson to the motion to disqualify. (Exhibit 6.)

On August 18, 2006, the District Court granted Applicant's motion to disqualify attorney Cheryl R. Hodgson from appearing in the District Court case. (Exhibit 7, Order Granting Motion to Disqualify Cheryl R. Hodgson as attorney for plaintiffs Federico Galindo et al.)

#### ARGUMENT

FOR THE SAME REASONS AND GROUNDS THAT THE DISTRICT COURT DISQUALIFIED ATTORNEY CHERYL R. HODGSON IN A RELATED U.S. DISTRICT COURT ACTION, THE TTAB SHOULD DISQUALIFY ATTORNEY HODGSON FROM REPRESENTING OPPOSER IN THIS ACTION

In order to succeed in its motion to disqualify Ms. Hodgson before the TTAB, Applicant is required to demonstrate that (1) Ms. Hodgson was Applicant's former attorney, (2) Ms. Hodgson now represents a party adverse to Applicant, and (3) the subject matter embraced by the present representation is "substantially related" to the subject matter in which Ms. Hodgson previously represented Applicant. Plus Products vs. Con-Stan Industries,

Inc., 221 USPQ 1071, 1074 (Comm'r Pat. 1984).

As demonstrated in Applicant's motion to disqualify made in the District Court case, the issues raised in Opposer's opposition proceeding are substantially related to the issues for which Opposer's attorney Cheryl R. Hodgson previously represented Applicant and its shareholders. Opposer claims that his rights are derived from Manuel "Manolo" Morales, who as a shareholder of Applicant had an "oral" agreement with Applicant and his fellow shareholders concerning the rights in the mark LOS RIELEROS DEL NORTE. Issues of shareholder relations, obligations and agreement were the precise issues for which Applicant and its shareholders entered into a written fee agreement with attorney Hodgson and for which each of Applicant's shareholders counseled with attorney Hodgson.

(Exhibit 5, Motion to Disqualify, Appendix, p. 2, ¶¶ 3-5.)

- A. Opposer's attorney Cheryl R. Hodgson not only had an attorney-client relationship with Applicant, but is apparently Applicant's attorney to this day.<sup>1</sup>

An attorney-client relationship is a contractual relationship whereby an attorney agrees to render professional services for a client. Mellon Serv. Co. v. Touche Ross, 17 S.W.3d 432, 437 (Tex. App. Houston 2000, no pet). The

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<sup>1</sup> As discussed below, this assumption arises from Ms. Hodgson's apparent retention of unearned retainer funds and lack of any dissociation notice to defendants.

relationship may be expressly created by contract, or it may be implied from the actions of the parties. Sutton v. Estate of McCormick, 47 S.W. 3d 179, 182 (Tex. App. Corpus Christi 2001); Mellon, 17 S.W. 3d at 437; Perez v. Kirk & Carrigan, 822 S.W. 2d 261, 265 (Tex. App. Corpus Christi 1991). Given the written retainer agreement between Hodgson and Applicant Los Rieleros del Norte, Inc. in which Applicant is expressly identified as a party to the attorney-client agreement, and the payment of monies to Hodgson as late as December 2002, there is no question that Ms. Hodgson has acted as Applicant's attorney. Ms. Hodgson's apparent retention of funds and lack of any notice of dissociation suggests that she continues to be Applicant's attorney to this day.

After entering into the attorney fee agreement, each of the shareholders of Applicant Los Rieleros del Norte, Inc. met with Hodgson in her California office--some on more than one occasion--and counseled with her regarding the subject matter of her representation, i.e. corporate matters and defendants' rights and obligations as shareholders. (Exhibit 5, Motion to Disqualify, Appendix, p. 2)

- B. The subject matter of Hodgson's prior representation of Applicant is substantially related to the issues raised in the Opposition she is now prosecuting on Opposer Federico Galindo's behalf.

To establish a substantial relationship between two

matters, a party must show "subject matter, issues and causes of action" common to both actions. In re American Airlines, 972 F. 2d at 614; Texaco, Inc. v. Garcia, 891 S.W.2d 255, 257 (Tex. 1995) (two distinct claims were substantially related due to the existence of similar liability issues, scientific issues and defenses). The test speaks of substantial relationship, not substantial identity, of legal and factual elements between the prior representation and the pending litigation. See Home Ins. Co. v. Marsh, 790 S.W.2d 749, 753 (Tex.App.--El Paso 1990, orig. proceeding). The factual matters need not be "relevant" in the evidentiary sense to be "substantially related." They need "only be akin to the present action in a way reasonable persons would understand as important to the issues involved." In re Corrugated Container Antitrust Litigation, 659 F.2d 1341, 1346 (5th Cir. 1981).

Once it is established that a prior representation is substantially related to a present case, "the court will irrebuttably presume that relevant confidential information was disclosed during the former period of representation." Duncan v. Merrill Lynch. Pierce. Fenner & Smith, 646 F.2d 1020, 1028 (5th Cir. 1981); In re Corrugated Container Antitrust Litigation, 659 F.2d 1341, 1347 (5th Cir. 1981). As the court states in Wilson P. Abraham Const. v. Armco Corp., 559 F.2d 250

(5th Cir. 1977),

This rule (the substantial relationship rule) rests upon the presumption that confidences potentially damaging to the client have been disclosed to the attorney during the former period of representation. The Court may not even inquire as to whether such disclosures were in fact made or whether the attorney in fact is likely to use the damaging disclosures to the detriment of its former client .... The inquiry is limited solely to whether the matters of the present suit are substantially related to matters of the prior representation, and this is because this Court recognizes that in order to aid the frank exchange between attorney and client, it is necessary to preclude even a possibility that information given in confidence by a former client will ever be used without that client's consent ....

Wilson P. Abraham Construction Corp., 559 F.2d at 252.

In the case at bar, attorney Hodgson agreed to represent Applicant Los Rieleros del Norte, Inc. and its shareholders in "corporate matters, including shareholder agreement." (Exhibit 5, Motion to Disqualify, Appendix, p. 4.) Each of the Applicant's shareholders met with Hodgson in her California office after she was hired as Applicant's attorney. The law presumes that during the course of Hodgson's former representation confidences were disclosed bearing on the subject matter of the representation, i.e. corporate matters and the contractual relationship of the shareholders. It is that contractual relationship between the shareholders of Applicant that Opposer places at issue in his District Court action as well as the instant Opposition seeking rights to the mark based

upon those alleged relationships.

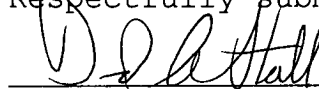
As the present action and Hodgson's prior representation are substantially related, the potential for abuse of defendants' confidences is not only great, it is irrebuttable. Hodgson's actions not only lack the appearance of propriety, they are unethical. She should therefore be disqualified from representing any party in this action. Further, she should be prohibited from sharing any information she has concerning this action with any other current counsel for plaintiff in this action, unless she is called as a witness in this action.

CONCLUSION

Based on the foregoing, Applicant Los Rieleros del Norte, Inc., respectfully requests that the instant petition to disqualify Cheryl L. Hodgson be granted in its entirety and that Cheryl L. Hodgson further be prohibited from disclosing any confidential information to any counsel subsequently appearing on behalf of Opposer Federico Galindo in this case.

Dated: February 16, 2007

Respectfully submitted,



\_\_\_\_\_  
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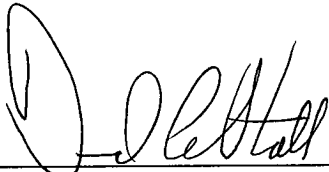
DECLARATION OF DAVID A. STALL IN SUPPORT OF  
PETITION OF APPLICANT LOS RIELEROS DEL NORTE TO  
DISQUALIFY CHERYL R. HODGSON AS COUNSEL FOR  
OPPOSER FEDERICO GALINDO

I, **DAVID A. STALL**, declare:

1. I am an attorney duly licensed to practice law before all courts of the State of California, and am the attorney of record for Defendant Los Rieleros del Norte, Inc. in the matter of Federico Galindo et. al vs. Los Rieleros del Norte, Inc. et. al now pending in the United States District Court, Western District of Texas under case number EP-06-CA-0098 KC [Texas Lawsuit]. As such, I have personal knowledge of the facts set forth herein below, and if called upon to do so I could, and would, competently testify thereto.
2. Exhibit 1 to Applicants Motion to Disqualify is a true and correct copy of the Complaint filed by Federico Galindo in the Texas Lawsuit on March 3, 2006.
3. Exhibit 2 to Applicants Motion to Disqualify is a true and correct copy of the Application of Cheryl Hodgson for Admission Pro Hac Vice filed in the Texas Lawsuit.
4. Exhibit 3 to Applicants Motion to Disqualify is a true and correct copy of the Order Granting the Application of Cheryl Hodgson for Admission Pro Hac Vice in the Texas Lawsuit.

5. Exhibit 4 to Applicants Motion to Disqualify is a true and correct copy of the Hourly Rate Fee Agreement between Cheryl Hodgson and Los Rieleros del Norte, Inc.
6. Exhibit 5 to Applicants Motion to Disqualify is a true and correct file copy of the Motion of Los Rieleros del Norte, Inc. to Disqualify Cheryl Hodgson filed in the Texas Lawsuit along with the supporting brief and the Appendix.
7. Exhibit 6 to Applicants Motion to Disqualify is a true and correct copy of the Reply to Opposition to Motion to Disqualify filed by Los Rieleros del Norte, Inc. in the Texas Lawsuit.
8. Exhibit 7 to Applicants Motion to Disqualify is a true and correct copy of the Order of Disqualification of Cheryl Hodgson entered in the Texas Lawsuit.

Executed this 16th day of February, 2007,  
at Irvine, California under penalty of perjury under the  
laws of the United States of America.

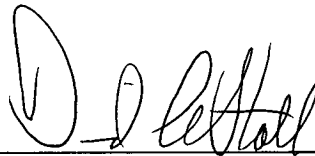
  
\_\_\_\_\_  
David A. Stall

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition of Applicant Los Rieleros Del Norte to Disqualify Cheryl R. Hodgson as Counsel for Opposer Federico Galindo was deposited this date with the United States Postal Service as first class mail in (an) envelope(s) addressed to each of the following:

Cheryl L. Hodgson  
Hodgson Law Group  
9606 Santa Monica Blvd., 3rd Fl  
Beverly Hills, CA 90210

Dated: February 16, 2007

A handwritten signature in black ink, appearing to read "David A. Stall", written over a horizontal line.

David A. Stall



JUDGE KATHLEEN CARDONE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

FILED

2006 MAR -3 PM 3:26

CLERK OF COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_  
DEPUTY

FIESTA MUSICAL, INC., a Colorado  
corporation; FEDERICO GALINDO,  
an individual; OLGA GALINDO,  
an individual,

Plaintiffs,

v.

Case No. \_\_\_\_\_

LOS RIELEROS DEL NORTE, INC. a  
corporation; DANIEL ESQUIVEL, an  
individual; ALFREDO ESQUIVEL, an  
individual; EUGENIO GONZALEZ, an  
individual; MANUEL MORALES, an  
individual; MARIA ESQUIVEL

Defendants.

EP06CA0098

COMPLAINT

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332, federal diversity jurisdiction, in that the parties to this action are residents of different states, and the amount in controversy exceeds \$75,000.

2. This action also arises under the Lanham Act, Act of July 5, 1946, 60 Stat. 427, U.S.C., Title 15, §§ 1051-1127. Jurisdiction is vested in this Court by virtue of 15 U.S.C. § 1121 and 28 U.S.C. § 1338.

PARTIES

3. Plaintiff FIESTA MUSICAL, INC., is a Colorado corporation ("Plaintiff"), with a principal place of business in Brighton, Colorado. ("Fiesta")

/

4. Plaintiffs FEDERICO GALINDO, ("Federico"), an individual and OLGA GALINDO, ("Olga"), an individual, are residents of the State of Colorado, and the principal shareholders in Fiesta (sometimes hereinafter referred to as "Galindos")

5. Defendant LOS RIELEROS DEL NORTE, INC., ("Los Rieleros" or "the Corporation") is a New Mexico corporation, with a principal place of business within this District, in the State of Texas. It can be served with process by serving its vice president Daniel Esquivel at 12850 Montana #6, El Paso, Texas 79938.

6. Defendant DANIEL ESQUIVEL, ("D. Esquivel"), an individual, resides in El Paso, Texas, and serves as Vice-President of Los Rieleros. He may be served with process at 12850 Montana #6, El Paso, Texas 79938.

7. Defendant ALFREDO ESQUIVEL, ("A. Esquivel") an individual, resides in El Paso, Texas, and serves as Secretary of Los Rieleros. He may be served with process at 12850 Montana #6, El Paso, Texas 79938.

8. Defendant EUGENIO GONZALEZ, ("Gonzalez") an individual, resides in El Paso, Texas, is also an officer of Los Rieleros. He may be served with process at 12850 Montana #6, El Paso, Texas 79938.

9. Defendant MARIA ESQUIVEL, ("M. Esquivel") an individual, resides in El Paso, Texas, is a key employee of Los Rieleros, and handles all funds and income received by Los Rieleros, acting under the control and direction of defendants D. Esquivel, A. Esquivel, and Gonzalez. She may be served with process at 12850 Montana #6, El Paso, Texas 79938.

#### VENUE

10. Pursuant to 28 U.S.C. § 1391, venue is proper in this district in that a substantial part of the events giving rise to the claims occurred in this District, a substantial part of the

property that is the subject of the action is situated in this District, all of the Defendants may be found here, and there is no District in which the action may otherwise be brought.

11. This action is not a collusive one that is brought as a derivative action in order to confer jurisdiction on a court of the United States in a case in which it would not otherwise have jurisdiction.

12. Los Rieleros, the corporation of which plaintiffs are shareholders and the corporation whose rights plaintiffs assert in this action, could have sued the same defendants on the claims asserted in this Complaint in this Western District of Texas so that venue is proper in this Court under 28 U.S.C. § 1401.

#### **FIRST CLAIM FOR SHAREHOLDERS' DERIVATIVE ACTION**

13. Plaintiffs bring this action as a derivative action within the meaning of *Rule 23.1 of the Federal Rules of Civil Procedure* on behalf of themselves and all other stockholders of Los Rieleros that are similarly situated.

14. Plaintiffs are now and were, at the time of the transactions that form the basis of this Complaint, stockholders of Los Rieleros, jointly holding 120 shares of common stock, of undetermined value as of November 10, 2005. Ownership of this stock devolved on plaintiffs by transfer after pledge for indebtedness by Manuel Morales, a person who was the original founding shareholder of Los Rieleros. Plaintiffs were the lawful owners of the stock at the time of the transactions that form the basis of this Complaint.

15. Plaintiffs fairly and adequately represent the interests of the shareholders similarly situated in enforcing the rights of Los Rieleros as alleged in this Complaint.

16. Plaintiffs made the following efforts to have suit brought for the defendant Los Rieleros Corporation by written demand upon the individual defendants Gonzalez, A. Esquivel, and D. Esquivel, the shareholders who are now in wrongful control of Los Rieleros.

**On December 23, 2005, plaintiffs served a letter on the remaining shareholders in control of Los Rieleros, by certified mail, return receipt requested. A true and correct copy of the letter is attached to and incorporated into this Complaint as Exhibit "A."**

17. Plaintiffs have made no additional efforts to have this suit brought for Los Rieleros by its current board of directors because any effort to do so would be futile. Efforts would be futile because plaintiff Federico Galindo was duly elected the Sole Director in May 2005 to serve for a term of one year, but in October 2005, he was improperly removed from control of the board without proper statutory notice or waiver thereof as required under New Mexico Corporate Statutes. Plaintiffs have made detailed written demand of the individual defendants as alleged above. These defendants would not take actions against themselves under any circumstances nor would they admit to conversion of Los Rieleros' assets to their private and personal use, as well as to the use of their employee defendant M. Esquivel.

18. Since at least as early as May 15, 2003 the individual defendants Gonzalez, A. Esquivel, and D. Esquivel, were the controlling officers and shareholders of Los Rieleros and have engaged upon a scheme to divert live performance revenues belonging to the corporation to their own private use rendering Los Rieleros incapable of meeting its legal obligations to its third party creditors, tax authorities, and the remaining shareholders. Such conduct has seriously damaged Los Rieleros, in that the company would otherwise be able to meet its corporate obligations but for the fraudulent diversion of funds by the individual defendants and their key employee M. Esquivel.

19. The amount of funds diverted is not known exactly, but is in no event less than \$500,000.00.



20. Plaintiffs' successful prosecution of this action will result in a substantial benefit to the corporation and, therefore, the plaintiff is entitled to reimbursement for their expenses in bringing this action, including reasonable attorney's fees.

### **SECOND CLAIM FOR COMPLAINT ON PROMISSORY NOTE**

21. Plaintiffs re allege paragraphs 1 through 10 as though fully set forth herein.

22. Morales, as well as defendants Los Rieleros, Gonzalez, A. Esquivel, and D. Esquivel on December 5, 2002, executed and delivered to plaintiff a promissory note a copy of which is hereto annexed as Exhibit B, whereby defendants and each of them, promised to pay to plaintiffs or order three hundred forty thousand dollars (\$340,000.00), in monthly payments of \$25,000 commencing on February 1, 2003, together with interest thereon at the rate of twelve per annum ("the Note").

23. The Note was secured by certain collateral, the title to which is vested in defendants. Plaintiffs hold a secured interest in certain equipment pursuant to the Uniform Commercial Code of the State of Texas.

24. Defendants owe to plaintiff the full amount of said Note and interest and are in default thereon.

### **THIRD CLAIM FOR BREACH OF WRITTEN CONTRACT**

25. Plaintiffs re-allege paragraphs 1 through 10 as though fully set forth herein.

26. On December 6, 2002, plaintiff Fiesta entered into a contract for management services with Defendants Morales and Los Rieleros, E. Gonzalez, A. Esquivel, and D. Esquivel for a term of three years, pursuant to which Fiesta rendered professional services to Los Rieleros in the nature of booking and confirming all professional events of Los Rieleros. Fiesta was to collect and disburse all revenues derived therefrom. A true and correct copy of the management contract is attached as "Exhibit C" ("the Management Contract").

27. In consideration of its services Fiesta was to receive a commission of 10% of gross revenues during the first year, and 15% during the second and third years of the term.

28. The Note also expressly provides that "Should for any reason Los Rieleros Del Norte terminate the management contract and the note is not paid in full the contract will continue to be enforced and the Corporation Los Rieleros Del Norte Inc with all assets will be security guaranty to this note until the balance is paid in full."

29. In October 2005, defendants Los Rieleros, and the individual defendants did attempt to terminate the Management Contract without payment of the amounts owed to the Galindos under the Note, and without payment of substantial unpaid commissions owed to Fiesta for services including accounting and payment for record royalties and advances, and payment on gross receipts instead of payments received by plaintiffs on net receipts from live performances.

#### **FOURTH CLAIM FOR FRAUD AND BREACH OF FIDUCIARY DUTIES**

30. Plaintiffs re-allege paragraphs 1 through 10 and 26 through 29 as though fully set forth herein.

31. On May 1, 2005 defendants E. Gonzalez, A. Esquivel, and D. Esquivel duly appointed plaintiff Federico Galindo as the sole Director and President of Los Rieleros to serve until May 2006.

32. As officers of Los Rieleros, defendants E. Gonzalez, A. Esquivel, and D. Esquivel owe a fiduciary duty to Los Rieleros, as well as the other shareholders of Los Rieleros.

33. The original founding member of Los Rieleros was Morales, a resident of the State of New Mexico. Morales as founding member of Los Rieleros served as President of Los Rieleros until May 15, 2003. After Morales and defendants E. Gonzalez, A. Esquivel, and D. Esquivel executed the promissory note and management contract attached as Exhibits B and C,

Morales was wrongly excluded from the business of Los Rieleros by defendants E. Gonzalez, A. Esquivel, and D. Esquivel, and has not been paid substantial sums owing him, either as a shareholder or employee of Los Rieleros.

34. In November 10, 2005, in consideration of forgiveness of liability for corporate indebtedness for monies lent by the Galindos to Morales personally, as well as on behalf of Los Rieleros, Morales did sell transfer and assign 120 shares of the common stock of Los Rieleros to the Galindos, together with an assignment of causes of action against Los Rieleros and the individual defendants.

35. Plaintiffs are informed, and based upon such information and belief allege that the individual defendants E. Gonzalez, A. Esquivel, and D. Esquivel executed Exhibits B & C without an intention to perform the obligations incurred by Los Rieleros, and with the intent to defraud the Galindos.

36. Plaintiffs are informed, and based upon such information and belief allege that the individual defendants E. Gonzalez, A. Esquivel, and D. Esquivel, acting in concert with defendant M. Esquivel, have been engaged in a scheme to defraud Los Rieleros, the remaining shareholders, and loot Los Rieleros of its assets and moneys rightfully belonging to Los Rieleros, to-wit:

(a) By failing to account for and deposit to the corporate bank account moneys rightfully belonging to Los Rieleros, including but not limited to moneys actually paid for the live performances as well as advances under the recording agreement with Univision Networks; and

(b) By diverting corporate funds for personal use of the shareholders in the form of purchase of vehicles, homes and other items of a personal nature, thus defrauding Los Rieleros of moneys necessary for meeting corporate obligations to third parties, including but not

limited to moneys owed to Morales as a shareholder of Los Rieleros, and to the Galindos for moneys owed under Exhibits B and C; and

(c) Since the wrongful termination of the term of the Management Contract In October 2005, by engaging in a scheme to sell equipment and corporate assets owned by Los Rieleros, and in which the Galindos have a security interest to secure repayment of indebtedness owed by Los Rieleros to the Galindos.

37. Defendants engaged in fraudulent conduct by failing to disclose information after a duty to do so was established and/or making a promise with no intent to fulfill its obligations which was a producing cause of Plaintiffs' damage.

38. Defendants Los Rieleros, E. Gonzalez, A. Esquivel, and D. Esquivel, acting in concert with defendant E. Esquivel, are members of and participated in a concerted effort or conspiracy to perpetrate the fraud on Plaintiffs described above.

#### **FIFTH CLAIM FOR TRADEMARK INFRINGEMENT**

39. Plaintiffs re allege paragraphs 1 through 10 and 31 through 34 as though fully set forth herein.

40. The service mark LOS RIELEROS DEL NORTE was first adopted and used by Morales in March 1984. Morales is well-known as the founder and originator of the group LOS RIELEROS DEL NORTE, and was until assignment to the Galindos, the sole owner of the mark LOS RIELEROS DEL NORTE.

41. Morales granted an oral license to Los Rieleros for use of the service mark LOS RIELEROS DEL NORTE ("the Mark"). The oral license granted by Morales was conditioned upon his continued participation in the active management and control of the business affairs together with his continued membership in the musical group performing under the Mark.

42. On November 10, 2005 did assign all rights title and interest in and to the Mark, together with the goodwill associated therewith to plaintiffs, together with the right to sue for past and present infringements.

43. On February 23, 2006, plaintiffs filed Application Serial No. 78822166 to register the mark LOS RIELEROS DEL NORTE with the U.S. Trademark Office.

44. The Mark has been in continuous use by Morales since 1984, except for the time period of his wrongful exclusion from the assets of Los Rieleros and the continued use of the Mark by the remaining shareholders without his authorization or consent. Such non use was without intention to abandon rights in the Mark.

45. The Mark LOS RIELEROS DEL NORTE has come to symbolize the good will of the business established by, and the entertainment services offered by Morales.

46. Morales, and his assignees, plaintiffs, have established valid common law rights in the Mark for entertainment services, phonorecords, and related merchandise such as caps and t-shirts.

47. There exists an overlap in the nature of plaintiffs' and defendants' goods and services, in that in the nature of the goods sold and services rendered by plaintiffs and defendants are identical.

48. Upon his involuntary disassociation from Los Rieleros on May 15, 2003, the oral license granted to the Corporation for use of the term LOS RIELEROS DEL NORTE was terminated and any further use was unlawful, and constituted a fraud and deception upon the consuming public.

49. Continued use of the Mark since May 15, 2003 was an infringement of Morales, and now the Galindos' rights in the Mark, in that there exists a likelihood of

confusion amongst members of the consuming public as to the source of origin of the entertainment services rendered by the Corporation and the individual defendants.

**SIXTH CLAIM FOR UNFAIR COMPETITION  
BY FALSE DESIGNATION OF ORIGIN – 15 U.S.C. § 1125(a)**

50. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 through 10 and 40 through 49 inclusive, and incorporates them herein by this reference.

51. The use by the defendants of LOS RIELEROS DEL NORTE or any variation thereof in connection with entertainment services is a false designation of origin and a false description or representation that wrongly and falsely designates and describes the services rendered by defendants as originating from or connected with plaintiffs and constitutes utilizing false descriptions or representations in commerce.

52. The acts of defendants alleged here in are in interstate commerce and are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association with plaintiffs or their commercial activities and the services of defendants, or as to the sponsorship or approval by plaintiffs of defendants' services or commercial activities. Defendants' actions further misrepresent the nature, characteristics or qualities of Defendants' goods, service or commercial activities.

53. Plaintiffs have no adequate remedy at law for the foregoing wrongful conduct of defendants in that, (i) defendants' actions damage and threaten to continue to damage plaintiffs' unique and valuable property, injury to which cannot adequately be compensated by monetary damages; (ii) the damages to plaintiffs from defendants' wrongful actions are not precisely and fully ascertainable; (iii) the wrongful act of defendants injure and threaten to continue to injure plaintiffs' reputation and goodwill; and (iv) the damages resulting to plaintiffs from defendants'

wrongful conduct, and the conduct itself, are continuing, and plaintiffs would be required to bring a multiplicity of suits to achieve full compensation for the injuries caused thereby.

54. By reason of the foregoing, defendants have violated and are continuing to violate 15 U.S.C. § 1125.

55. Plaintiffs are entitled to an injunction restraining defendants, their officers, agents and employees, and all persons acting in concert with them, from engaging in any further acts in violation of 15 U.S.C. § 1125. Unless restrained, the foregoing wrongful acts of defendants will continue to cause irreparable injury to plaintiffs, both during the pendency of this action and thereafter. Therefore, Plaintiffs request that this court enter an order permanently enjoining defendants and their agents, employees, and others acting in concert with them from directly or indirectly using the term LOS RIELEROS DEL NORTE in connection with entertainment services, phonorecords, and related merchandise.

56. Plaintiffs are further entitled to recover from defendants the damages, including attorneys' fees, they have sustained and will sustain, and any gains, profits and advantages obtained by defendants as a result of their acts of infringement alleged above. Based upon the circumstances of the case, including the willful deliberate and intentional nature of defendants' conduct in wrongfully depriving plaintiffs' predecessor in interest and now plaintiffs from their rights in the term LOS RIELEROS DEL NORTE, plaintiffs are entitled, pursuant to 17 U.S.C. § 1117, to recover triple the amount found as actual damages.

**SEVENTH CLAIM FOR DECLARATORY RELIEF (28 U.S.C. § 2201(a))**

57. Plaintiffs re-allege paragraphs in paragraphs 1 through 19, 21 through 23, 25 through 28, 30 through 39, 40 through 49, and 51 through 56 inclusive, and by reference thereto, incorporates the same as though fully set forth herein.

58. Plaintiffs seek a declaration of that they have the lawful common law rights in the mark LOS RIELEROS DEL NORTE as successor in interest to Manuel Morales.

#### **EIGHTH CLAIM FOR ACCOUNTING**

59. Plaintiffs re allege paragraphs in paragraphs 1 through 19, 21 through 23, 25 through 28, 30 through 39, 40 through 49, and 51 through 56 inclusive, and by reference thereto, incorporates the same as though fully set forth herein.

60. Plaintiffs are entitled to recover from and on behalf of Los Rieleros all sums personally diverted by the individual defendants.

61. Defendants' actions were and continue to be committed willfully. By this action, Plaintiffs ask that Defendants be ordered to provide a full and complete accounting of all sums received by the individual defendants that were otherwise due and payable to Los Rieleros from royalties and/or live performance income.

#### **NINTH CLAIM FOR CONSTRUCTIVE TRUST**

62. Plaintiffs re allege paragraphs in paragraphs 1 through 19, 21 through 23, 25 through 28, 30 through 39, 40 through 49, and 51 through 56 inclusive, and by reference thereto, incorporates the same as though fully set forth herein.

63. Plaintiffs are informed and believe, and on such information and belief allege that the individual defendants through wrongful actions, gained profits and other improper compensation otherwise due to Los Rieleros, its creditors and remaining shareholders.

64. As a result of the defendants' wrongful diversion of income belonging to Los Rieleros, Plaintiffs pray that the court grant a Constructive Trust thus holding E. Gonzalez, A. Esquivel, D. Esquivel and M. Esquivel, involuntary trustees of Los Rieleros' portions of the royalties and earnings, as well as assets wrongfully purchased with Los Rieleros funds, and



further, to prevent E. Gonzalez, A. Esquivel, D. Esquivel and M. Esquivel from taking advantage of their wrongdoing.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray:

- A. That Plaintiffs recover for the benefit of Los Rieleros the damages described in this Complaint, together with pre- and post-judgment interest as allowed by law.
- B. That Plaintiffs recover the amounts owed under the promissory notes together with interest at the rate of 12% as provided by the note.
- C. That Plaintiffs recover the amounts owed to them as commissions due under the Management Contract.
- D. That an accounting be ordered by defendants individually and on behalf of Los Rieleros for all moneys wrongfully diverted from Los Rieleros by the individual defendants named herein.
- E. For a permanent injunction, enjoining defendants and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for them from:
- F. Using the marks or domain names LOS RIELEROS DEL NORTE or any colorable imitation thereof, in the United States and elsewhere, in connection with any services connected with, or related entertainment services, phonorecords, and related tour merchandise;
- G. Otherwise infringing plaintiffs' service mark;
- H. Causing likelihood of confusion, deception, or mistake as to the source, nature, or quality of defendants' services;
- I. For all of defendants' profits derived from its infringement of plaintiffs' service mark;

J. For three times the amount of plaintiffs' actual damages caused by defendants infringement of plaintiffs' service mark;

K. That actual and punitive damages for fraud be entered against the individual defendants according to proof.

L. That Plaintiffs recover reasonable attorney's fees incurred in the prosecution of this action for the benefit of Los Rieleros and pursuant to the terms of Exhibit B.

M. Plaintiffs recover any other and further relief that may be just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff hereby demands a jury trial of this action.

Dated: March 3, 2006

Respectfully submitted,

**THE LAW OFFICE OF DAVID PIERCE**

221 N. Kansas, Suite 504

El Paso, Texas 79901

Telephone: (915) 351-9772

Facsimile: (915) 351-9976

By: 

**DAVID PIERCE**

State Bar No. 15992700

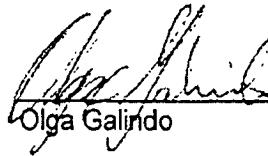
Attorney for Plaintiffs

VERIFICATION BY DECLARATION

I, Olga Galindo, am one of the plaintiffs in this matter. I have read the Complaint set forth above, and the facts stated in the Complaint are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 27, 2006 at Denver, Colorado.



Olga Galindo

I, Federico Galindo, am one of the plaintiffs in this matter. I have read the Complaint set forth above, and the facts stated in the Complaint are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 27, 2006 at Denver, Colorado.



Federico Galindo

# EXHIBIT A

02/28/2006 23:31 5058819801

SALON FANTASIA

PAGE 01

FIESTA MUSICAL  
15188 Madison St.  
Brighton, CO 80602

**BY FIRST CLASS MAIL**

December 23, 2005

Messrs. Alfredo Esquibel,  
Daniel Esquibel and Eugenio Gonzales  
Los Rieleros del Norte, Inc.  
12850 Montana Avenue, Space 6  
El Paso, TX 79938

Re: Default Under Management Agreement and Promissory Notes

Gentleman:

We are in receipt of your purported Notification of Termination of Contract dated October 10, 2005. This letter is our official response, written on behalf of Fiesta Musical, and each of individually.

1. The Management Agreement is Still in Effect. Your notice of October 10 was not valid and id not serve to terminate the management agreement. That agreement remains valid and binding upon you.

On December 5, 2005, we advanced as a loan, in exchange for the promissory note signed on behalf of the corporation, 340,000 which enabled you to buy-out your agreement with Javier Rivera. That note called for monthly payments of \$25,000, and interest at the rate of 12% per annum. The promissory note expressly provides:

"Should for any reason Los Rieleros Del Norte terminate the management contract and the note is not paid in full the contract will continue to be enforced and the Corporation Los Rieleros Del Norte Inc. with all assets will be security guaranty to this note until the balance is paid in full."

That note remains unpaid, and is in default. paragraph 7.05 of the Management agreement expressly references the promissory note and each of you approved it at the same time you executed the management agreement.

02/28/2006 23:31 5058819801

SALON FANTASIA

PAGE 02

Los Rieleros del Norte, Inc.  
Page 2 of 3

December 23, 2005

Immediately upon receipt of this letter, I demand that you provide me with a full and complete accounting of all moneys collected by, or contracts payable to the group, since October 2005, including advances under a new recording agreement with Fonovisa/Univision. Those moneys must be fully accounted for in the corporate books and bank accounts, and made available for repayment of corporate obligations now in default. Your failure to do so is a serious breach of your obligations under the management agreement and of laws regarding corporate governance.

2. Corporate Management. On May 1, 2005, I was appointed the President and Sole Director of Los Rieleros Del Norte, Inc. for a term of one year. That appointment continues, as no lawful action of the Board or Shareholders has taken place to change my status as President and Director. As such, I hereby demand a full and complete accounting of all moneys paid to you, either in cash or in kind, in order that the corporation can fully and completely meet its substantial financial obligations now in default.

3. Manuel Morales Buy-Out. This letter will also formally advise you that Manuel Morales has transferred a portion of his stock interest in the company to me, in consideration of moneys I loaned to him personally, as well as moneys I advanced as a loan to Manolo in 2001, on behalf of the group, which he used to pay the corporate taxes owed by Los Rieleros Del Norte, Inc. No lawful action has ever been taken to finalize a buy out of Manolo's stock interest, who remains a shareholder in the company. A resolution of his status and a fair buy out agreement of the remainder of his stock is a serious outstanding obligation of the company.

4. Breaches of the Management Contract. The following details your default under the management agreement in other respects:

a. Paragraph 3.01 Fiesta is owed for telephone, internet, fax and incidentals, including defense costs of the law suits against you by Clear Channel former employee Efren Silva.

b. Paragraph 3.09 You have failed to fully account and pay 15% of all royalties as provided in ¶ 4.06 of the agreement, including 15% of moneys advanced to you under a new recording agreement with Fonovisa.

c. Paragraph 4.02 You have failed to pay 15% of the gross revenues received by the group, instead paying only on the net income after expenses.

Unless immediate arrangements are made for repayment of all obligations, and I hear from you not later than 10 days from the date of this letter, I will proceed with such legal action as is necessary to collect moneys owed, and

02/28/2006 23:31 5058819801

SALON FANTASIA

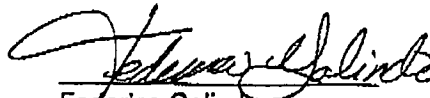

PAGE 03

Los Rieleros del Norte, Inc.  
Page 3 of 3

December 23, 2005

protect the company. As provided in the note, you will be liable for costs and fees incurred in collection.

Sincerely,

  
Federico Galindo  
Olga Galindo

# EXHIBIT B



Dec-20-05 04:24pm From:Kinkos #0584 El Paso - Montana  
01/30/1996 08:25 915-855-9650

915 781 1624  
LOS RIELEROS

T-698 P.002/003 F-824  
PAGE 02

### PROMISSORY NOTE

AMOUNT \$340,000.00

Note Date: December 5, 2002

POR VALUE RECEIVED, Los Rieleros Del Norte, Inc., Manuel D. Morales, Alfredo Esquivel, Daniel Esquivel and Eugenio Gonzales ("Maker") promises to pay Federico Galindo and Olga Galindo ("Holder") or subsequent Assignee the Three hundred and forty thousand dollars (\$340,000.00) with interest on the defaulted, unpaid balance only, at the rate of twelve per cent (12%) per annum. The monthly payments of principal shall be due and payable at Twenty Five Thousand Dollars (\$25,000.00) per month for twelve months (12) months, beginning February 1, 2003.

If payments are not made within five (5) days after due date, Maker agrees to pay late charges of five cents (\$.05) per installment dollar past due in addition to the regular installment, but not to exceed the maximum lawful rate allowed by applicable law. Any one or more of the monthly installments may at Maker's option be paid to their respective maturities without penalty.

If any default occurs in the making of any payments hereunder and such default continues for more than five (5) days after written notice thereof, from Holder to Maker, the entire balance of this Note shall become immediately due and payable, plus interest on the unpaid balance, if not already due and payable, at Holder's election expressed by written notice mailed to Maker at Maker's last known place of business.

All parties hereto, including Maker and any endorsers and/or guarantors, hereby waive presentment and all demands and notices in connection with the delivery, acceptance, performance and enforcement of this Note. They consent that time of payment may be extended without notice. Should payment not be made when due or in the event of default, each party shall pay to Holder the costs of collection, including reasonable attorney's fees and cost, plus pre- and post-judgment interest on the unpaid, defaulted balance.

Should for any reason Los Rieleros Del Norte Terminate the management contract and the note is not paid in full the contract will continue to be enforced and the Corporation Los Rieleros Del Norte Inc with all assets will be security guaranty to this note until the balance is paid in full.

The Maker's obligation is joint and several.

Unless and until notice to the contrary is given by Holder, all payments hereunder shall be sent to: Federico and Olga Galindo, 15188 Madison St., Brighton, CO 80601.

Any assignment for the benefit of creditors by Makers or the institution by or against Maker of any proceedings under the Bankruptcy Act or any other law in which Makers are alleged to be insolvent or unable to pay debts as they mature shall be deemed a material breach and demand and shall render this Promissory Note due and payable immediately.

In the event of any litigation by either party to enforce this Note, the losing party shall in any litigation, reimburse the prevailing party for all reasonable attorney's fees and costs.

MAKER

Los Rieleros del Norte, Inc.  
12850 Montana Avenue, Space No. 6  
El Paso, TX 79938

By:

Manuel D. Morales  
Manuel D. Morales, President

12/18/2002  
(Date)

Dec-20-05 04:24pm From-Kinkos #0564 El Paso - Montana  
01/30/1996 06:26 915-855-9650

915 781 1624  
LOS RIELEROS

T-698 P.003/003 F-924  
PAGE 89

The owners and shareholders of Los Rieleros certify that they have had an opportunity to consult counsel of their own choice and obtain a translation of the terms of this Contract and the promissory Note of December 5, 2002, into Spanish. They agree to enter both this Contract and Promissory Note as drafted in English.

T8.00 Signatures.

Los Rieleros del Norte, Inc.

Mannuel D. Morales  
Mannuel D. Morales, Individually

12/18/2002  
(Date)

Alfredo Esquivel  
Alfredo Esquivel, Individually

12/18/2002  
(Date)

Daniel Esquivel  
Daniel Esquivel, Individually

12/18/2002  
(Date)

Eugenio Gonzales  
Eugenio Gonzales, Individually

12/18/2002  
(Date)

# EXHIBIT C

## CONTRACT FOR MANAGEMENT

This Contract for Management ("Contract") is entered between Fiesta Musical, Inc., a Colorado corporation ("Fiesta" or "Manager") and Los Rieleros del Norte, Inc. ("Los Rieleros"), a New Mexico corporation registered in Texas, is entered on this 6<sup>th</sup> day of December, 2002.

### RECITALS.

R1.00 Los Rieleros, an organization of professional musicians, wishes to engage Fiesta to exclusively manage its professional bookings and events.

R2.00 Fiesta wishes to manage Los Rieleros for the term and under the conditions set out below.

### TERMS OF CONTRACT.

T1.00. Term of Contract. This contract is effective December 6, 2002, through December 5, 2005.

T2.00 Responsibilities of Fiesta, the Manager.

2.01 Manager shall book and confirm all professional events of Los Rieleros, in any country, including but not limited to concerts, rodeos, private engagements, and other paid public appearances. The members of Los Rieleros shall assist in bookings to every extent possible; however, the Manager shall have the ultimate authority to book and confirm.

2.02 Manager shall collect all revenues payable to Los Rieleros for the events described herein. Manager shall have the exclusive authority to perform this duty.

2.03 Manager shall disburse all revenues collected, as described in §2.01 to Los Rieleros, after deduction of Manager's commissions and costs described in this Contract.

2.04 Manager shall account for all revenues and disbursements described herein, in a commercially acceptable written format, and report this information to Los Rieleros no less than quarterly.

2.05 Manager shall pay its own taxes and other governmental obligations, personnel costs, overhead, and other costs of doing business, except as set forth in this Contract. Manager shall hold Los Rieleros harmless from any such obligations.

**T3.00 Responsibilities of Los Rieleros.**

**3.01** Los Rieleros shall maintain the corporation in good standing in New Mexico and Texas for the term of this contract.

**3.02** Los Rieleros is exclusively responsible for the reporting and payment of all taxes, fees, penalties, and other governmental obligations of any kind. Los Rieleros shall hold Manager harmless upon any such obligations.

**3.03** Los Rieleros shall pay all vendor bills and obligations related to these events. Los Rieleros shall hold Manager harmless for any such obligations.

**3.04** Los Rieleros shall hold Manager harmless from all obligations, including judgments, of any kind related to the terms and conditions of this Contract. Los Rieleros shall hold Manager harmless from all obligations, including judgments, related to its former relationships with Mexico Musical, Javier Rivera, and related entities.

**3.05** Los Rieleros shall pay all its own insurances, personnel costs and benefits, administrative overhead and costs, and other costs of doing business not otherwise described herein. Los Rieleros shall hold Manager harmless upon any such bills and obligations.

**3.06** Los Rieleros shall be responsible to book, secure, and pay for all Los Rieleros' transportation, lodging, meal, and incidental costs of the described professional engagements. Los Rieleros shall hold Manager harmless upon any such bills and obligations.

**3.07** Should Manager be named a defendant in any litigation related to a subject for which it has been held harmless in this Contract, Los Rieleros shall pay Manager's attorneys' fees and costs of defense.

**3.08** Los Rieleros shall be responsible to reimburse all Manager's transportation, lodging, meal, telephone, Internet, facsimile, and incidental costs of the described professional engagements. Manager is specifically authorized to reimburse itself from Los Rieleros' proceeds collected for any event, as long as an accounting for any such reimbursement, by invoice or other sufficient documentation, is presented to Los Rieleros at the time of reimbursement. Alternatively, Los Rieleros shall pay these amounts within ten (10) days of presentment of invoices or other sufficient documentation.

**3.09** Los Rieleros shall pay royalties to Manager as set forth in §4.06.

3.10 Los Rieleros shall make its best faith efforts to perform all booked events in the most professional manner.

#### T4.00 Payment to Manager

4.01 Manager shall exclusively collect and distribute all fees and other compensation paid to Los Rieleros for the professional events which are the subject of this Contract. In every case possible, the Manager shall secure an obligation to pay those fees and other compensation in advance or at the time of performance. Where that is not the case, Manager shall collect and distribute the fees and other compensation immediately thereafter, provided that, if litigation is necessary to secure the fees and other compensation, Manager will undertake such litigation only if Los Rieleros pays the attorneys' fees and costs thereof. Manager shall be held harmless by Los Rieleros from the obligation to pay any uncollectible fees.

4.02 Manager shall be paid a commission calculated at ten per cent (10%) of the gross revenues of every professional event which is the subject of this Contract for the first year, and fifteen per cent (15%) for the second and third years of this Contract. "Gross revenues" are figured before expenses are deducted. Payment shall be paid to itself as soon as collection is accomplished, but in no event more than three days after collection.

4.03 Manager's costs described in §3.08 shall be reimbursed either from Los Rieleros' portion of the gross revenues, in addition to Manager's commission herein described, or if necessary, within the ten (10) days set out in §3.08.

4.04 Manager shall collect and distribute Los Rieleros' portion of its professional fees and other compensation as soon as collection is accomplished, but in no event more than three (3) days after collection.

4.05 Should Los Rieleros refuse or be unable to perform any booked engagement secured by the Manager, Los Rieleros shall pay the Manager ten per cent (10%) of the estimated gross revenues which otherwise would have been produced, plus his actual costs. "Estimated gross revenues" can be calculated based on actual advanced or same-day ticket sales, past attendance records, or other reasonable methods. This amount shall be due and payable within five (5) business days of the date of the scheduled event. Los Rieleros shall hold Manager for any obligations incurred to third parties, including but not limited to, facility rental costs.

4.06 Manager shall receive fifteen per cent (15%) of all royalties accruing to Los Rieleros during the pendency of this Contract. They shall be disclosed to Manager immediately and accounted and paid within ten (10) days of receipt by Los Rieleros.

T5.00 Termination.

5.01 This Contract shall terminate on December 5, 2005, unless renewed sixty (60) days prior thereto by a sufficient writing.

5.02 Termination for Cause. Upon sufficient grounds, including but not limited to, material breach of terms, bankruptcy or insolvency of a party, theft or fraud related to payments due herein to the parties, related and material criminal conviction, permanent or significantly temporary disruption of the ability to do business, any party can terminate this Contract by giving thirty (30) days' written notice to the other party.

T6.00 Notices.

6.01 To Los Rieleros: 12850 Montana Ave., Space #6, El Paso, TX 79938

To Fiesta: 15188 Madison St., Brighton, CO 80601

6.02 Notices shall be sent by first class mail, sufficient address and postage affixed.

T7.00 Miscellaneous Provisions.

7.01 This Contract is the complete agreement of the parties. No verbal amendments or revisions shall be enforceable to alter its terms. All amendments must be in writing agreed and signed by the parties.

7.02 Should this Contract result in litigation between the parties, the prevailing party's reasonable attorneys' fees and costs shall be paid by the losing party. This Contract shall be governed under the laws of the State of Colorado. The situs of any litigation shall be Adams County, Colorado.

7.03 The terms of this Contract are severable and if any part is deemed invalid, the remainder remains in full force and effect.

7.04 The parties agree to grant each other reasonable access to each other's financial statements and records, within ten (10) days of written request.

7.05 Los dueños y miembros de la corporation Los Rieleros certifican que tuvieron la oportunidad de consultar con abogados de su preferencia y obtener una interpretación de los terminus de este contrato y nota de promesa de pago de Diciembre 5, 2002, en español. Ellos están de acuerdo con el contrato y nota de promesa de pago original escrita en el idioma inglés.

[The owners and shareholders of Los Rieleros certify that they have had an opportunity to consult counsel of their own choice and obtain a translation of the terms of this Contract and the Promissory Note of December 5, 2002, into Spanish. They agree to enter both this Contract and Promissory Note as drafted in English.]

T8.00 Signatures.

Los Rieleros del Norte, Inc.

Marcos D. Morales  
Marcos D. Morales, Individually

12/18/2002  
(Date)

Alfredo Esquivel  
Alfredo Esquivel, Individually

12/18/2002  
(Date)

Daniel Esquivel  
Daniel Esquivel, Individually

12/18/2002  
(Date)

Eugenio Gonzales  
Eugenio Gonzales, Individually

12/18/2002  
(Date)





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\$25.00

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

2006 MAR 15 AM 10:26

FIESTA MUSICAL, INC., a Colorado  
corporation; FEDERICO GALINDO,  
an individual; OLGA GALINDO,  
an individual,

Plaintiffs,

v.

LOS RIELEROS DEL NORTE, INC. a  
corporation; DANIEL ESQUIVEL, an  
individual; ALFREDO ESQUIVEL, an  
individual; EUGENIO GONZALEZ, an  
individual; MARIA ESQUIVEL

Defendants.

Case No. EP-06-CA-0098-KC

**MOTION FOR ADMISSION PRO HAC VICE**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now CHERYL L. HODGSON, applicant herein, and moves this Court to grant admission to the United States District Court for the Western District of Texas *pro hac vice* to represent OLGA & FEDERICO GALINDO in this case, and would respectfully show the Court as follows:

1. Applicant is an attorney and a member of the law firm (or practices under the name of) HODGSON LAW GROUP, with offices at:

|                        |                                |
|------------------------|--------------------------------|
| Mailing address:       | 1610 Colorado Avenue, Ste. 200 |
| City, State, Zip Code: | Santa Monica, CA 90404         |
| Telephone:             | (310) 449-1070                 |
| Facsimile:             | (310) 496-1580                 |

6

2. Since 1989, Applicant has been and presently is a member of and in good standing with the Bar of the State of California. Applicant's bar license number is 141275.

3. Applicant has been admitted to practice before the following courts:

|                            |                 |
|----------------------------|-----------------|
| Court:                     | Admission date: |
| New York                   | 1994            |
| Colorado/C. D. Colorado/D. | 1976/1990/1976  |
| California                 | 1989            |
| Oregon/ D. Oregon          | 1978/1979       |

4. Applicant is presently a member in good standing of the bars of the courts listed above, except as provided below (list any court named in the preceding paragraph before which Applicant is no longer admitted to practice): COLORADO

5. Applicant has never been subject to grievance proceedings or involuntary removal proceedings while a member of the bar of any state or federal court, except as provided below:  
NONE

6. Applicant has not been charged, arrested, or convicted of a criminal offense or offenses, except as provided below (omit minor traffic offenses): NONE

7. Applicant has read and is familiar with the Local Rules of the Western District of Texas and will comply with the standards of practice set out therein.

8. Select one:

☒ [X] Applicant has on file an application for admission to practice before the United States District Court for the Western District of Texas.

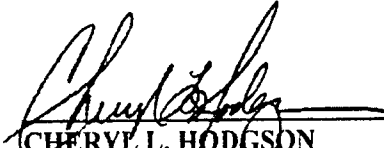
☒ [X] Applicant has co-counsel in this case who is admitted to practice before the United States District Court for the Western District of Texas.

|                        |                          |
|------------------------|--------------------------|
| Co-counsel:            | David Pierce             |
| Mailing address:       | 221 N. Kansas, Suite 504 |
| City, State, Zip Code: | El Paso, TX 79901        |
| Telephone:             | (915) 351-9772           |

9. Should the Court grant applicant's motion, Applicant shall tender the amount of \$25.00 *pro hac vice* fee in compliance with Local Court Rule AT-1(f)(1) [checks made payable to: Clerk, U.S. District Court].


WHEREFORE, Applicant prays that this Court enter an order permitting the admission of CHERYL L. HODGSON to the Western District of Texas *pro hac vice* for this case only.

Respectfully submitted,

  
\_\_\_\_\_  
CHERYL L. HODGSON

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of this motion upon each attorney of record and the original upon the Clerk of Court on this the 14<sup>th</sup> day of March, 2006.

  
\_\_\_\_\_  
for CHERYL L. HODGSON  
with permission



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

FIESTA MUSICAL, INC., a Colorado  
corporation; FEDERICO GALINDO,  
an individual; OLGA GALINDO,  
an individual,

Plaintiffs,

v.

LOS RIELEROS DEL NORTE, INC. a  
corporation; DANIEL ESQUIVEL, an  
individual; ALFREDO ESQUIVEL, an  
individual; EUGENIO GONZALEZ, an  
individual; MARIA ESQUIVEL

Defendants.

Case No. EP-06-CA-0098-KC

2006 MAR 21 AM 10:19  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

ORDER

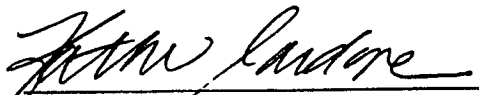
BE IT REMEMBERED on this the 21<sup>st</sup> day of March, 2006, there was presented to the Court the Motion for Admission *Pro Hac Vice* filed by CHERYL L. HODGSON, counsel for OLGA & FEDERICO GALINDO, and the Court, having reviewed the motion, enters the following order. It is

**ORDERED** that the Motion for Admission *Pro Hac Vice* is GRANTED, and CHERYL L. HODGSON may appear on behalf of OLGA & FEDERICO GALINDO in the above case. It is further

**ORDERED** that CHERYL L. HODGSON, if he/she has not already done so, shall immediately tender the amount of \$25.00, made payable to: Clerk, U.S. District Court, in compliance with Local Court Rule AT-1(f)(1).

7.

SIGNED this the 21<sup>st</sup> day of March, 2006.

  
UNITED STATES DISTRICT JUDGE





## HOURLY RATE FEE AGREEMENT

This Attorney-Client fee contract (the "Agreement") is the written fee contract that California law requires lawyers to have with their clients. It is between LOS RIELEROS DEL NORTE, INC., a New Mexico corporation, Manuel D. Morales, Daniel Esquivel, Eugenio Gonzalez, and Alfredo Esquivel, Dir. 12850 Montana # 6 El Paso, TX 79938, whose address is (collectively "Client") and CHERYL L. HODGSON, Attorney at Law, 1875 Century Park East, Suite 850, Los Angeles, CA 90067 ("Attorney").

1. **CONDITIONS.** This agreement will not take effect, and Attorney will have no obligation to provide legal service until Client returns a signed copy of this Agreement, together with the agreed retainer.

2. **SCOPE OF SERVICES.** Client is hiring Attorney to represent Client as counsel in connection 1) contracts entered into by Client with Javier Rivera, 2) Corporate matters including shareholder agreement; 3) such other matters as may be requested of Attorney from time to time.

3. **CLIENT'S DUTIES.** Client agrees to be truthful with Attorney, to cooperate, to keep Attorney informed of developments, to abide by this Agreement, to pay Attorney's fees and costs on time, and to keep Attorney informed of their address, telephone number and whereabouts.

4. **RETAINER.** Client agrees to pay Attorney an initial retainer of \$ 1500. Attorney will hold this initial deposit in a trust account to secure payment of costs and fees. Client hereby authorizes Attorney to use that deposit to pay the costs, disbursements and fee incurred under this Agreement; provided however, Attorney may pay any cost of less than \$100 directly from the trust fund, but amounts exceeding \$100 will be paid by client promptly upon presentation of a statement therefore, failing which Attorney may then reimburse the same from the trust fees. Further, in the event Client fails to make timely payment of fees as agreed herein, Attorney may deduct outstanding fees owed from trust funds, or in the alternative, may deduct fees from the trust account.

When the deposit is exhausted, Attorney reserves the right to demand further deposits, in such amounts to be mutually agreed upon. Client agrees to pay all deposits required under this Agreement within ten days of Attorney's request therefor. Any unused and unearned deposit at the conclusion of our services will be refunded.

### 5. **LEGAL FEES, COSTS AND BILLING PRACTICES.**

Attorney will be compensated for legal services as set forth below:

|                         |                  |
|-------------------------|------------------|
| Attorney's Hourly Rate: | \$ 335 per hour. |
| Associates              | \$ 150 per hour  |
| Law clerks              | \$ 95 per hour   |
| Paralegals              | \$ 75 per hour   |

From time to time Attorney may change her rates but will give client prior notice of any change in rates.

6. **COSTS OUT OF POCKET EXPENSES.** All costs, disbursements and litigation expenses associated with clients services, including filing fees, photocopy services, computer-assisted legal research, long distance telephone charges, messenger and delivery fees, postage, in-office photocopying at \$ .25 per page, facsimile charges at \$1.00 per page, deposition costs, parking, mileage at \$ .30 per mile, consultants' fees, expert witness fees and other similar items. Client understands, as set forth in Paragraph 5, above, Client may be required to make a deposit for costs before the expenditure is made by Attorney.

Client agrees to pay all costs connection with the prosecution of client's claim, and authorizes Attorneys to deduct from the proceeds of any recovery any such costs incurred or paid out by Attorneys on behalf of client to the extent not previously paid by client.

7. **LIMITATION ON REPRESENTATION.** In the event of non settlement of the action prior to trial, and if Client shall fail to deposit sufficient moneys necessary for conducting a proper defense and trial in this matter, Attorney shall have the right to withdraw from further representation of Client. In connection therewith, Client agrees to execute the enclosed substitution of counsel concurrently upon the execution of this agreement. Attorney shall have the right to file a Motion to Withdraw, and/or file the Substitution of counsel with the court.

8. **APPROVAL NECESSARY FOR SETTLEMENT.** Attorney will not make any settlement or compromise of any nature of any of Client's claims with Client's prior approval. Client agrees that he will not make a settlement or compromise of any nature of any of his claims without prior notice to Attorney.

9. **DISCHARGE AND WITHDRAWAL.** Client may discharge Attorney at any time, upon written notice to Attorney, and Attorney will immediately after receiving such notice, cease to render additional services. Such a discharge does not, however, relieve Client of the obligation to pay any costs and fees incurred prior to such termination, and Attorney shall have the right to recover from Client the reasonable value of his legal services rendered for the effective date of this Agreement to the date of discharge.

Attorney may withdraw from representation of client (a) with your consent (b) upon court approval, or (c) upon your failure to make payments as agreed herein.

10. **BILLING STATEMENTS.** As to fees and costs due, Attorney shall send you periodic statements for fees and costs incurred. Client agrees to pay my statements within ten (10) days after each statement's date for all fees accrued after the initial contract. Client may request a statement at intervals of no less than 30 days. Upon request, Attorney will provide a statement within ten (10) days. Unpaid balances shall bear interest at the rate of 12% per annum. In the event of any action to enforce the terms of this agreement or to collect sums due hereunder, you agree that I shall be entitled to recover, in addition to sums owed hereunder, attorneys' fees incurred in maintaining any such action.

11. **LIEN.** Attorneys are hereby given a lien on any and all claims or causes of action that are the subject of attorney's representation under this agreement. proceeds of any recovery. Attorney's lien will be for any sums owing to Attorney for and unpaid costs, or attorney's fees, or interesting in assets recovered, at the conclusion of Attorney's services. This lien will attach to any recovery of money or assets Client may obtain, whether by arbitration award, judgment, settlement or otherwise.

12. **DISCLAIMER OF GUARANTEE.** Client understands that Attorneys have made no promises or guarantees regarding the outcome of Client's claim. Attorney's comments about the outcome of Client's matter are expressions of opinion, only.

Client has read and acknowledges that he understands and agrees to its terms and conditions, and has received a copy of it. There are no other oral or written agreements between client and the Attorneys.

Dated: July 25, 2002

(Client)

LOS RIELEROS DEL NORTE, INC.



By: Manuel D. Morales,  
President



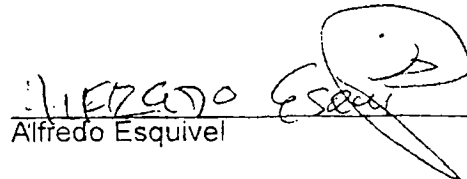
Manuel D. Morales



Daniel Esquivel

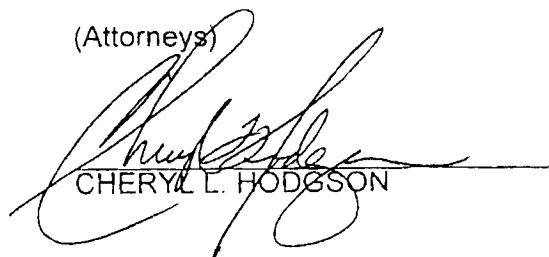


Eugenio Gonzalez



Alfredo Esquivel

(Attorneys)



CHERYL L. HODGSON



FIESTA MUSICAL, INC., a Colorado  
corporation; FEDERICO GALINDO,  
an individual; OLGA GALINDO,  
an individual,  
Plaintiffs,

CIVIL ACTION  
NO. EP-06-CA-0098 KC

LOS RIELEROS DEL NORTE, INC. a  
corporation; DANIEL ESQUIVEL, an  
individual; ALFREDO ESQUIVEL, an  
individual; EUGENIO GONZALEZ, an  
individual; MANUEL MORALES, an  
individual; MARIA ESQUIVEL,  
Defendants.

Now come defendants and movants Los Rieleros del Norte, Inc., Daniel Esquivel, Alfredo Esquivel and Eugenio Gonzalez, by and through their attorney, Enrique Lopez, and submit this Motion to Disqualify attorney Cheryl R. Hodgson as attorney for the plaintiffs in this action, and state as follows:

1. Cheryl L. Hodgson has entered her appearance pro hac vice as attorney for plaintiffs in this action.
2. Plaintiffs' claims in this action include allegations of improper conduct by the individual defendants as shareholders of the corporate entity Los Rieleros del Norte, Inc. in breaching a December 2002 management agreement and default on a December 2002 promissory note.
3. In July 2002, Cheryl L. Hodgson undertook the legal representation of the

defendants with regard to their rights and obligations as a corporation and as shareholders, and with respect to claims made by their former manager Javier Rivera against them under a management agreement and loan, and agreed to represent them in ongoing legal matters as they arose.

4. Pursuant to Cheryl L. Hodgson's representation of defendant, she drafted an Hourly Rate Fee Agreement, which was executed by each of the defendants in this action.

5. Defendants deposited at least \$2,500 in funds with Cheryl L. Hodgson for her services, including a deposit defendants made to Hodgson after the "document date" listed at the head of the promissory note and management agreement, Exhibits B and C to the complaint, which Ms. Hodgson now seeks to enforce against the defendants.

6. After executing the Hourly Rate Fee Agreement with Ms. Hodgson, each of the defendants (including Manuel "Manolo" Morales, in part the source of plaintiffs' claims in this action) met with Ms. Hodgson to discuss corporate, shareholder and related matters for which defendants had retained her.

7. On November 22, 2002, two weeks prior to the "document date" on the promissory note and management agreement at issue, Cheryl L. Hodgson sent a letter to defendants' prior manager, Javier Rivera, making an inquiry regarding outstanding balances owed to defendants and requesting other confidential information, including royalty statements from defendants' record company, performance agreements, etc.

8. Cheryl L. Hodgson has not sent a dissociation letter to defendants terminating her representation of them in corporate and shareholder matters. In addition, it appears that Ms. Hodgson still has funds of defendants on deposit in her account. Ms. Hodgson ostensibly continues to represent defendants.

9. The complaint presented by plaintiffs herein demonstrates Ms. Hodgson's knowledge of defendants and their relationship to each other and the corporate entity, including allegations that movants are "controlling officers and shareholders" who, less than nine months after retaining Ms. Hodgson, were engaged in a "diversion of funds" (Complaint, p. 4, ¶ 18), and that Manuel "Manolo" Morales is a "founding shareholder" of the corporation and that his transfer of his shares in the corporation to plaintiffs was "lawful." (Complaint, p. 3, ¶ 14.)

10. The complaint also alleges that defendants committed fraud as individual shareholders when they entered into a management agreement and promissory note with plaintiffs in early December 2002, while they were still represented by Ms. Hodgson. (Complaint, p. 7, ¶ 35.)

11. Not only does the complaint allege facts unique to the corporate entity as well as defendants' relationship to the corporation and to each other as shareholders, plaintiffs have issued discovery to defendants relating to matters within the scope of Cheryl L. Hodgson's representation of defendants.

12. ABA Rule of Professional Conduct 1.9 and the corresponding Texas Disciplinary Rule of Professional Conduct 1.09 prohibit a lawyer from representing a person in a substantially related matter adverse to a former client.

13. The legal issues, claims and defenses relating to defendants' rights and obligations as shareholders, as well as the relationship of those rights to the claims made by defendants' former manager in 2002, are substantially related to the issues raised in the instant action. Moreover, there is a legitimate question as to whether defendants are "former clients" of Ms. Hodgson's or whether they continue to be current clients of Cheryl L. Hodgson by virtue of the lack of a dissociation letter and her retention of client funds.

WHEREFORE, defendants Los Rieleros del Norte, Inc., Daniel Esquivel, Alfredo Esquivel and Eugenio Gonzalez respectfully request that this Court enter an order disqualifying Cheryl L. Hodgson from representing plaintiffs in the instant action and prohibiting her from disclosing defendants' confidential information (outside of the discovery process and subject to proper judicial oversight) to any other counsel, including subsequent counsel, appearing for plaintiffs in this action.

Respectfully submitted,

ANTONIO V. SILVA, P.C.

Dated: June \_\_, 2006

---

ENRIQUE LOPEZ  
State Bar No. 12563530  
2616 Montana Avenue  
El Paso, TX 79903  
Telephone: (915) 564-5444  
Facsimile: (915) 564-4413  
Email: [elopez@silvalawpc.com](mailto:elopez@silvalawpc.com)

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion of defendants Los Rieleros Del Norte, Inc., Daniel Esquivel, Alfredo Esquivel and Eugenio Gonzalez to Disqualify Cheryl R. Hodgson has been hand-delivered to David Pierce, 221 N. Kansas, Suite 504, El Paso, Texas 79901, fax: 915-351-9976, on this \_\_ day of June 2006.

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ENRIQUE LOPEZ



FIESTA MUSICAL, INC., a Colorado corporation; FEDERICO GALINDO, an individual; OLGA GALINDO, an individual,  
Plaintiffs.

CIVIL ACTION  
NO. EP-06-CA-0098 KC

LOS RIELEROS DEL NORTE, INC. a §  
corporation; DANIEL ESQUIVEL, an §  
individual; ALFREDO ESQUIVEL, an §  
individual; EUGENIO GONZALEZ, an §  
individual; MANUEL MORALES, an §  
individual; MARIA ESQUIVEL, §  
Defendants. §

Now come defendants and movants Los Rieleros del Norte, Inc., Daniel Esquivel, Alfredo Esquivel and Eugenio Gonzalez, by and through their attorney, Enrique Lopez, and submit this Brief in Support of their Motion to Disqualify attorney Cheryl R. Hodgson as attorney for the plaintiffs in this action.

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## **INTRODUCTION**

A district court must take measures against unethical conduct occurring in a proceeding before it. The Fifth Circuit has held that a motion to disqualify is the proper method for bringing issues of conflict of interest or breach of ethical duties to the attention of the court. Texas courts have long recognized that, where an attorney becomes privy to a party's confidential information, a fiduciary relationship may exist between an attorney and that party, requiring disqualification. Additionally, courts have routinely granted motions to disqualify on the ground of conflicting representation where the movant shows: (i) an attorney-client relationship between the moving party and the attorney subject to disqualification; and (ii) a substantial relationship between the subject matter of the present and former representations.

In the case at bar, attorney Cheryl R. Hodgson, who has been admitted pro hac vice as plaintiff's attorney herein, has represented defendants in corporate and shareholder matters that are now at issue in the complaint. Ms. Hodgson is now prosecuting against those same defendants. Ms. Hodgson's attorney-client relationship with the moving parties precludes her adverse representation in this case. Furthermore, the improper use of confidential information gleaned by Ms. Hodgson in her representation is prohibited under Texas law. Accordingly, defendant's motion to disqualify should be granted in its entirety.

## **STATEMENT OF FACTS**

Defendants and movants in this proceeding are Los Rieleros del Norte, Inc. ("Los Rieleros"), a corporate entity offering musical services through its shareholders, and Eugenio Gonzalez, Alfredo Esquivel and Daniel Esquivel, the individual shareholders who are also members of the musical group Los Rieleros del Norte. The Complaint alleges that the individuals are shareholders in "wrongful control" of the corporate entity Los Rieleros del Norte,

Inc. (Complaint, p. 3, ¶ 16), and alleges that they have engaged in improper conduct of corporate and shareholder activities as well as breached obligations to plaintiffs.

A. Cheryl L. Hodgson has represented defendants in matters substantially related to the issues in this action.

In July 2002, the individual defendant movants, together with Manuel “Manolo” Morales and the corporate entity Los Rieleros, retained the services of Cheryl L. Hodgson as their attorney. An “Hourly Rate Fee Agreement” drafted by Ms. Hodgson and executed by each of the movants provided for her representation “in connection 1) contracts entered into by Client with Javier Rivera; 2) Corporate matters including shareholder agreement; 3) such other matters as may be requested of Attorney from time to time.” (Appendix, pp. 4-6.) After executing the attorney-client above agreement, each of the defendants met with Ms. Hodgson to obtain counsel regarding their corporate and shareholder obligations, including with regard Javier Rivera, an individual who managed the musical group and made loans, and who was now claiming an interest in the Los Rieleros business, essentially identical types of claims as those made in the instant action by plaintiffs, defendants’ former manager. (Appendix, pp. 2-3.) As indicated in the Hourly Rate Fee Agreement, Ms. Hodgson’s services were to cover all such issues, plus any other matters defendants brought to her.

By November 2002, defendants had come to terms with respect to a buyout of Javier Rivera’s claims, as reflected in a letter sent to Mr. Rivera by Ms. Hodgson as the Los Rieleros’ attorney, in which she requested information concerning the \$300,000 Rivera was apparently demanding from the group. (Appendix, pp. 2, 9.) The promissory note for \$340,000 allegedly signed by defendants and attached as Exhibit B to the verified Complaint herein, has a “Note Date” at the head of the document of December 5, 2002, less than two weeks following Ms. Hodgson’s letter to Rivera (Complaint, Exh. B), and nearly one week before Los Rieleros made a

deposit of \$2,500 to Ms. Hodgson's account for her attorney services. (Appendix., pp. 2, 7.)

Ms. Hodgson is believed to be currently holding a balance of defendants' funds in her account as she has never notified defendants of any termination of her representation nor has she returned any monies on deposit. (Appendix, p. 3.) Thus, while she is prosecuting plaintiffs' claims against defendants she is still ostensibly the attorney for those same defendants.

B. The allegations of the Complaint suggest Cheryl L. Hodgson's personal knowledge of defendants' confidential information.

Having represented the corporation as well as the individual movants as shareholders, Ms. Hodgson now sues those same parties on behalf of plaintiffs for purported violations of their duties as shareholders and for other conduct related to the corporate issues which she was hired to handle in 2002. The Complaint drafted by Ms. Hodgson suggests an intimate personal knowledge of the inner workings of defendant Los Rieleros del Norte, Inc. and the inter-relationship of the defendants that may relate to her representation of movants. For example, the complaint alleges:

(1) that as of May 15, 2003--less than 9 months after movants retained Ms. Hodgson's services as attorney--that movants Eugenio Gonzalez, Alfredo Esquivel and Daniel Esquivel were the "controlling officers and shareholders" of the corporate entity Los Rieleros del Norte, Inc. who engaged in the diversion of funds. (Complaint, p. 4, ¶ 18).

(2) that Manuel "Manolo" Morales--another client of Ms. Hodgson's under the same Hourly Rate Fee Agreement--is a "founding shareholder" of Los Rieleros del Norte, Inc. who "lawfully" transferred his corporate shares to plaintiffs (Complaint, p. 3, ¶ 14),<sup>1</sup>

(3) that defendant Maria Esquivel acts under the "control and direction" of the remaining

---

<sup>1</sup> Ms. Hodgson is arguably counsel to both Manuel Morales as assignor and plaintiffs as assignees of the shares. (Complaint, p. 5, ¶ 26) Plaintiff Galindo also claims to have been the sole director of Los Rieleros (Complaint, p. 6, ¶ 31), raising further conflicts.

shareholders (Complaint, p. 2, ¶ 9),

(4) that Ms. Hodgson's clients, Los Rieleros del Norte, Eugenio Gonzalez, Alfredo Esquivel and Daniel Esquivel “wrongfully excluded” Hodgson’s client Manuel Morales from the business of Los Rieleros del Norte, Inc., and that Morales subsequently assigned his causes of action against the individual defendants to Ms. Hodgson's client, plaintiffs herein. (Complaint, pp. 6-7, ¶¶ 33-34.)

(5) that movants committed fraud as individual shareholders in December 2002--at the same time Hodgson was accepting attorney’s fees from defendants--by executing the promissory note and management agreement attached to the Complaint at a time when they allegedly had no intention of performing their obligations to plaintiffs thereunder. (Complaint, p. 7, ¶ 35.)

All of the above allegations implicate issues of corporate governance and shareholder conduct, issues for which movants hired Hodgson as their attorney. From the moment Hodgson was hired to represent the defendants--all of them!--in 2002, she is presumed to have obtained confidential information concerning the corporate entity Los Rieleros del Norte, Inc., the individual defendant shareholders who were also her clients, the issues surrounding their former manager Rivera, as well as the functional--or dysfunctional--aspects of their corporate structure and governance. Primed with that inside knowledge, she now seeks to capitalize on her understanding of movants’ strengths and weaknesses garnered through the attorney-client relationship. This Court should permit her to act no further.

To add to this blatant breach of professional responsibilities, plaintiffs, through Ms. Hodgson’s offices, have sought discovery as to “agreement among the shareholders relating to the purchase of sale of share of stock in defendant Los Rieleros del Norte” (Doc. Req. 9, Appendix, p. 16); “documents pertaining to the corporate status and history of defendant Los

Rieleros del Norte.....” (Doc Req. 10, Appendix, p. 16); and “documents----reflecting communications between Manuel Morales and the other shareholders from 2002 to present date.” (Doc Req. 14, Appendix, p. 17). Ms. Hodgson was likely a part of those communications and would herself be a potential witness as to those matters.

- C. Given Cheryl L. Hodgson’s relationship to defendants, the use of facially questionable documents as exhibits to the complaint prepared by Cheryl L. Hodgson and verified by plaintiffs should be addressed by the Court.

Given Ms. Hodgson’s relationship with all of the parties to this action and her apparent involvement with the preparation of the verified complaint, another issue indirectly related to her disqualification requires attention. It appears that the signature block of complaint Exhibit C, the management contract, and the signature block of complaint Exhibit B, the promissory note, are IDENTICAL (Complaint, Exhs. B and C), even though they purport to be distinct documents. In each document, the paragraph preceding the identical signature blocks contains identical language, albeit in *different* fonts. Although the management agreement copy plaintiff attaches as complaint Exhibit C is blurry, defendants’ copies of the two documents attached as Exhibits B and C to the Complaint more clearly show the identity of the signatures blocks of both documents. (Appendix, p. 19, and p. 24, respectively.) Presumably, Ms. Hodgson has the originals of both documents in her possession.

Since it is unlikely that the signature blocks of two different documents would be IDENTICAL--with identical signatures in identical juxtaposition to their signature lines as well as to the other signatures--Ms. Hodgson may be in a position to shed some light on the origin of the two documents since movants only have one version in their position, and copies at that, which are attached to this motion. (Appendix, p. 19, and p. 24, respectively.)



## ARGUMENT

I. ATTORNEY CHERYL R. HODGSON SHOULD BE DISQUALIFIED FROM REPRESENTING PLAINTIFFS IN THIS ACTION AS SHE REPRESENTED MOVANTS IN MATTERS SUBSTANTIALLY RELATED TO THE ISSUES RAISED IN PLAINTIFFS' COMPLAINT.

Federal courts in this circuit have consistently disqualified attorneys on the ground of a conflicting representation where the facts show: (1) an attorney-client relationship between the moving party and the attorney he seeks to disqualify; and (2) a substantial relationship between the subject matter of the former and present representations. In re American Airlines, 972 F.2d at 605, 614 (5th Cir. 1992); In re Dresser Indus., 972 F.2d 540, 543 (5th Cir. 1992); Johnson v. Harris County Flood Control Dist., 869 F.2d 1565, 1569 (5th Cir. 1989).<sup>2</sup>

A. Plaintiff's attorney Cheryl R. Hodgson not only had an attorney-client relationship with movants, but is apparently movants' attorney to this day.<sup>3</sup>

An attorney-client relationship is a contractual relationship whereby an attorney agrees to render professional services for a client. Mellon Serv. Co. v. Touche Ross, 17 S.W.3d 432, 437 (Tex. App. Houston 2000, no pet). The relationship may be expressly created by contract, or it may be implied from the actions of the parties. Sutton v. Estate of McCormick, 47 S.W. 3d 179,

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<sup>2</sup> Motions to disqualify an attorney are substantive motions determined by standards developed under Federal law. In re American Airlines, 972 F.2d at 610; In re Dresser, 972 F.2d at 543. Federal courts may adopt state or ABA rules as their ethical standards, but whether and how these rules should be applied remains a question of federal law. In re American Airlines, 972 F.2d at 610. Thus, while the Texas Disciplinary Rules are relevant to the disqualification of counsel from litigation, they are not dispositive. In re Dresser, 972 F.2d at 545 n. 12.

The Fifth Circuit has taken a "hands-on" approach to preventing conflicts of interest, holding that a district court is "obligated to take measures against unethical conduct occurring in connection with any proceeding before it." In re American Airlines, 972 F.2d at 611, quoting Woods v. Covington County Bank, 537 F.2d 804, 810 (5th Cir. 1976); see also Kevlik v. Goldstein, 724 F.2d 844, 847 (1st Cir. 1984) (district court has the duty and responsibility of supervising the conduct of attorneys who appear before it). The proper method for a party to bring issues of conflict of interest or breach of ethical duties to the attention of the court is a motion to disqualify. Musicus v. Westinghouse Elec. Com., 621 F.2d 742, 744 (5th Cir. 1980).

<sup>3</sup> As discussed below, this assumption arises from Ms. Hodgson's apparent retention of funds and lack of dissociation from defendants.

182 (Tex. App. Corpus Christi 2001); Mellon, 17 S.W. 3d at 437; Perez v. Kirk & Carrigan, 822 S.W. 2d 261, 265 (Tex. App. Corpus Christi 1991). Given the written retainer agreement between Hodgson and movants and the payment of monies to Hodgson as late as December 2002, there is no question that Ms. Hodgson has acted as movants' attorney. Ms. Hodgson's apparent retention of funds and lack of dissociation suggests that she continues to be movants' attorney to this day.

After entering into the attorney fee agreement, each of the movants met with Hodgson in her California office--some on more than one occasion--and counseled with her regarding the subject matter of her representation, i.e. corporate matters and defendants' rights and obligations as shareholders. (Appendix, p. 2.) Such counseling was crucial to movants, as they sought to their relationship with former manager Javier Rivera, who was claiming an interest in movant's corporate business. (Appendix, pp. 2-3.)

- B. The subject matter of Hodgson's representation of movants is substantially related to the issues raised in the complaint she is now prosecuting against movants on plaintiffs' behalf.

To establish a substantial relationship between two matters, a party must show "subject matter, issues and causes of action" common to both actions. In re American Airlines, 972 F. 2d at 614; Texaco, Inc. v. Garcia, 891 S.W.2d 255, 257 (Tex. 1995) (two distinct claims were substantially related due to the existence of similar liability issues, scientific issues and defenses). The test speaks of substantial relationship, not substantial identity, of legal and factual elements between the prior representation and the pending litigation. See Home Ins. Co. v. Marsh, 790 S.W.2d 749, 753 (Tex.App.--El Paso 1990, orig. proceeding). The factual matters need not be "relevant" in the evidentiary sense to be "substantially related." They need "only be akin to the present action in a way reasonable persons would understand as important to the issues involved." In re Corrugated Container Antitrust Litigation, 659 F.2d 1341, 1346 (5th Cir.

1981).

Once it is established that a prior representation is substantially related to a present case, “the court will irrebuttably presume that relevant confidential information was disclosed during the former period of representation.” Duncan v. Merrill Lynch, Pierce, Fenner & Smith, 646 F.2d 1020, 1028 (5th Cir. 1981); In re Corrugated Container Antitrust Litigation, 659 F.2d 1341, 1347 (5th Cir. 1981). As the court states in Wilson P. Abraham Const. v. Armco Corp., 559 F.2d 250 (5th Cir. 1977),

This rule (the substantial relationship rule) rests upon the presumption that confidences potentially damaging to the client have been disclosed to the attorney during the former period of representation. The Court may not even inquire as to whether such disclosures were in fact made or whether the attorney in fact is likely to use the damaging disclosures to the detriment of its former client .... The inquiry is limited solely to whether the matters of the present suit are substantially related to matters of the prior representation, and this is because this Court recognizes that in order to aid the frank exchange between attorney and client, it is necessary to preclude even a possibility that information given in confidence by a former client will ever be used without that client's consent ....

Wilson P. Abraham Construction Corp., 559 F.2d at 252.

In the case at bar, attorney Hodgson agreed to represent defendants in “corporate matters, including shareholder agreement.” (Appendix, p. 4.) Each of the movants met with Hodgson in her California office after she was hired as their attorney. The law presumes that during the course of Hodgson’s former representation confidences were disclosed bearing on the subject matter of the representation, i.e. corporate matters and the relationship and conduct of defendants as shareholders. These very issues are now raised in plaintiffs’ complaint, as noted above.

As the present action and Hodgson’s prior representation are substantially related, the potential for abuse of defendants’ confidences is not only great, it is irrebuttable. Hodgson’s actions not only lack the appearance of propriety, they are unethical. She should therefore be disqualified from representing any party in this action. Further, she should be prohibited from

sharing any information she has concerning this action with any other current counsel for plaintiff in this action, unless she is called as a witness in this action.

II. A FIDUCIARY RELATIONSHIP EXISTS BETWEEN PLAINTIFFS' COUNSEL CHERYL L. HODGSON AND MOVANTS, WARRANTING DISQUALIFICATION IN THIS CASE.

Even if this Court were to find that the prior attorney-client relationship is not “substantially related” to the issues in the pending action, this Court should nevertheless disqualify Cheryl R. Hodgson due to the fiduciary relationship that exists between her and defendants, her former clients.

Texas courts have long recognized that, even in the absence of a prior attorney-client relationship, there may exist a fiduciary obligation between an attorney and a party requiring disqualification. Wilson P. Abraham Const., 559 F.2d 250 (where information was exchanged among co-defendants and their attorneys in a criminal case, an attorney who received such information would breach a fiduciary duty if in a later case he could use that information to the detriment of one of those co-defendants, even though he never actually represented the co-defendant); B.F. Goodrich Co. v. Formosa Plastics Corp. et al, 638 F. Supp. 1050 (S.D. Tex. 1986).

Generally, a fiduciary relationship is created when an attorney becomes privy to confidential information that it is bound to protect. Thus, in Wilson P. Abraham, an attorney who represented one of several co-defendants in a federal grand jury investigation of antitrust law violations in the steel industry could not later represent plaintiffs in a civil antitrust action against his client's former co-defendants. Although the attorney never actually represented the Defendants and his former client was not a party to the civil action, the Fifth Circuit still found that the attorney would breach a fiduciary duty if he were allowed to use confidential information obtained from the Defendants during the joint defense of the criminal investigation

in the civil action. The court held:

[w]hen information is exchanged between various co-defendants and their attorneys ... this exchange is not made for the purpose of allowing unlimited publication and use, but rather, the exchange is made for the limited purpose of assisting in their common cause. In such a situation, an attorney who is the recipient of such information breaches his fiduciary duty if he later, in his representation of another client, is able to use this information to the detriment of one of the co-defendants.

Id. At 253.

Although attorney Hodgson would be hard pressed to argue that she has not represented each of the movants, the fact that she was retained to represent movants in corporate and shareholder matters demonstrates that as an attorney she had obtained sufficient information from movants and their fellow shareholders to diagnose a need and to undertake their representation. Hodgson cannot now vigorously represent the plaintiffs in the instant action without disclosing confidences she has obtained through her representation of defendants. At the very least, defendants, have a right not to see Hodgson using her confidential information on the opposite side of a litigation. Because attorney Hodgson's continued representation in this case will breach her fiduciary duty to movants Los Rieleros del Norte, Inc., Eugenio Gonzalez, Alfredo Esquivel and Daniel Esquivel, as well as compromise their confidences, and cause a strong appearance of impropriety, disqualification is warranted.

### III. CONCLUSION

Based on the foregoing, movants Los Rieleros del Norte, Inc., Eugenio Gonzalez, Alfredo Esquivel and Daniel Esquivel respectfully request that this motion to disqualify Cheryl L. Hodgson be granted in its entirety and that Cheryl L. Hodgson be prohibited from disclosing any confidential information to any counsel subsequently appearing on behalf of plaintiffs in this case. Movants further ask that the court retain jurisdiction over Ms. Hodgson pending resolution of the source of the noted document discrepancies in the complaint.

Respectfully submitted,

ANTONIO V. SILVA, P.C.

Dated: June \_\_\_, 2006

---

ENRIQUE LOPEZ  
State Bar No. 12563530  
2616 Montana Avenue  
El Paso, TX 79903  
Telephone: (915) 564-5444  
Facsimile: (915) 564-4413  
Email: [elopez@silvalawpc.com](mailto:elopez@silvalawpc.com)

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of defedants Los Rieleros Del Norte, Inc., Daniel Esquivel, Alfredo Esquivel and Eugenio Gonzalez in suppoert of Motion to Disqualify Cheryl R. Hodgson has been hand-delivered to David Pierce, 221 N. Kansas, Suite 504, El Paso, Texas 79901, fax: 915-351-9976, on this \_\_\_\_ day of June 2006.

---

ENRIQUE LOPEZ

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

FIESTA MUSICAL, INC., a Colorado §  
corporation; FEDERICO GALINDO, §  
an individual; OLGA GALINDO, §  
an individual, §  
Plaintiffs, §

v. §

CIVIL ACTION  
NO. EP-06-CA-0098 KC

LOS RIELEROS DEL NORTE, INC. a §  
corporation; DANIEL ESQUIVEL, an §  
individual; ALFREDO ESQUIVEL, an §  
individual; EUGENIO GONZALEZ, an §  
individual; MANUEL MORALES, an §  
individual; MARIA ESQUIVEL, §  
Defendants. §

**APPENDIX TO MOTION OF DEFEDANTS LOS  
RIELEROS DEL NORTE, INC., DANIEL ESQUIVEL,  
ALFREDO ESQUIVEL AND EUGENIO GONZALEZ TO  
DISQUALIFY CHERYL R. HODGSON**

2. In 2002, Javier Rivera was the manager of our musical group Los Rieleros del Norte and had been for several years. Manolo Morales, the president of Los Rieleros del Norte,



Inc. at the time, found Cheryl L. Hodgson, an entertainment attorney with offices in the Los Angeles area, and we hired her to help us separate ourselves from Mr. Rivera, who was claiming rights in Los Rieleros del Norte, Inc., in the group, etc.

3. In July 2002, I signed the Hourly Rate Fee Agreement prepared by Cheryl L. Hodgson, a true and correct copy of which is attached to this Affidavit as Exhibit A. Ms. Hodgson agreed to counsel us as a corporation and as shareholders, as demonstrated by the Hourly Rate Fee Agreement.

4. We paid Cheryl L. Hodgson money for her services, including a deposit of \$2,500 made on a corporate check in or about December 2002, a true and correct copy of which is attached as Exhibit B. Ms. Hodgson's last bill that I have seen was dated December 2002 and showed that she still had our funds on deposit. A true and correct copy of the December 2002 bill is attached hereto as Exhibit C. To my knowledge, Ms. Hodgson has never returned any balance to our office.

5. After we hired Cheryl L. Hodgson as our attorney, I personally went to her offices in California on two different occasions to discuss issues with her regarding our corporation and our relationship and obligations as shareholders, particularly with respect to our manager who had loaned us money and had managed us and was making claims against us as a corporation and shareholders. Each of the other shareholders, including Manolo Morales, Eugenio Gonzalez and Daniel Esquivel, also went to her offices in California to speak to her at least once regarding the same issues and how we were going to resolve them.

6. By November 2002, we were coming to terms with our former manager. Cheryl L. Hodgson wrote a letter to him requesting information regarding the \$300,000 he was claiming from our group, a true and correct copy of which is attached as Exhibit D.

7. To my mind, the issues involved in our hiring of Cheryl L. Hodgson and the issues in this case are the same, as they relate to our obligations as owners and shareholders of Los Rieleros corporation, and our responsibilities to a manager who had loaned us money and was now making claims against us, including requesting an interest in our business. It is unfair for Cheryl L. Hodgson to use against us in this action the knowledge of our operations and relationships that she has acquired as our attorney.

8. To my knowledge, Ms. Hodgson has never sent a letter advising us that she was no longer representing the corporate entity Los Rieleros del Norte, Inc. or any of us as individual shareholders. I do not recall any indication by her that she no longer considered herself to be our attorney until we received the lawsuit in this case.

FURTHER AFFIANT SAYETH NOT

---

Alfredo Esquivel

Subscribed and sworn to before me  
On this 26th day of June, 2006

---

BOBBY BEE  
NOTARY PUBLIC, LOS ANGELES COUNTY, CA  
MY COMMISSION EXPIRES: XXX XXX XXX

## HOURLY RATE FEE AGREEMENT

This Attorney-Client fee contract (the "Agreement") is the written fee contract that California law requires lawyers to have with their clients. It is between LOS RIELEROS DEL NORTE, INC., a New Mexico corporation, Manuel D. Morales, Daniel Esquivel, Eugenio Gonzalez, and Alfredo Esquivel, Dir. 12850 Montana # 6 El Paso, TX 79938, whose address is (collectively "Client") and CHERYL L. HODGSON, Attorney at Law, 1875 Century Park East, Suite 850, Los Angeles, CA 90067 ("Attorney").

1. **CONDITIONS.** This agreement will not take effect, and Attorney will have no obligation to provide legal service until Client returns a signed copy of this Agreement, together with the agreed retainer.

2. **SCOPE OF SERVICES.** Client is hiring Attorney to represent Client as counsel in connection 1) contracts entered into by Client with Javier Rivera, 2) Corporate matters including shareholder agreement; 3) such other matters as may be requested of Attorney from time to time.

3. **CLIENT'S DUTIES.** Client agrees to be truthful with Attorney, to cooperate, to keep Attorney informed of developments, to abide by this Agreement, to pay Attorney's fees and costs on time, and to keep Attorney informed of their address, telephone number and whereabouts.

4. **RETAINER.** Client agrees to pay Attorney an initial retainer of \$ 1500. Attorney will hold this initial deposit in a trust account to secure payment of costs and fees. Client hereby authorizes Attorney to use that deposit to pay the costs, disbursements and fee incurred under this Agreement; provided however, Attorney may pay any cost of less than \$100 directly from the trust fund, but amounts exceeding \$100 will be paid by client promptly upon presentation of a statement therefore, failing which Attorney may then reimburse the same from the trust fees. Further, in the event Client fails to make timely payment of fees as agreed herein, Attorney may deduct outstanding fees owed from trust funds, or in the alternative, may deduct fees from the trust account.

When the deposit is exhausted, Attorney reserves the right to demand further deposits, in such amounts to be mutually agreed upon. Client agrees to pay all deposits required under this Agreement within ten days of Attorney's request therefor. Any unused and unearned deposit at the conclusion of our services will be refunded.

### 5. **LEGAL FEES, COSTS AND BILLING PRACTICES.**

Attorney will be compensated for legal services as set forth below:

|                         |                  |
|-------------------------|------------------|
| Attorney's Hourly Rate: | \$ 335 per hour. |
| Associates              | \$ 150 per hour  |
| Law clerks              | \$ 95 per hour   |
| Paralegals              | \$ 75 per hour   |

From time to time Attorney may change her rates but will give client prior notice of any change in rates.

6. **COSTS OUT OF POCKET EXPENSES.** All costs, disbursements and litigation expenses associated with clients services, including filing fees, photocopy services, computer-assisted legal research, long distance telephone charges, messenger and delivery fees, postage, in-office photocopying at \$ .25 per page, facsimile charges at \$1.00 per page, deposition costs, parking, mileage at \$ .30 per mile, consultants' fees, expert witness fees and other similar items. Client understands, as set forth in Paragraph 5, above, Client may be required to make a deposit for costs before the expenditure is made by Attorney.

Client agrees to pay all costs connection with the prosecution of client's claim, and authorizes Attorneys to deduct from the proceeds of any recovery any such costs incurred or paid out by Attorneys on behalf of client to the extent not previously paid by client.

7. **LIMITATION ON REPRESENTATION.** In the event of non settlement of the action prior to trial, and if Client shall fail to deposit sufficient moneys necessary for *conducting a proper defense and trial in this matter*, Attorney shall have the right to withdraw from further representation of Client. In connection therewith, Client agrees to execute the enclosed substitution of counsel concurrently upon the execution of this agreement. Attorney shall have the right to file a Motion to Withdraw, and/or file the Substitution of counsel with the court.

8. **APPROVAL NECESSARY FOR SETTLEMENT.** Attorney will not make any settlement or compromise of any nature of any of Client's claims with Client's prior approval. Client agrees that he will not make a settlement or compromise of any nature of any of his claims without prior notice to Attorney.

9. **DISCHARGE AND WITHDRAWAL.** Client may discharge Attorney at any time, upon written notice to Attorney, and Attorney will immediately after receiving such notice, cease to render additional services. Such a discharge does not, however, relieve Client of the obligation to pay any costs and fees incurred prior to such termination, and Attorney shall have the right to recover from Client the reasonable value of his legal services rendered for the effective date of this Agreement to the date of discharge.

Attorney may withdraw from representation of client (a) with your consent (b) upon court approval, or (c) upon your failure to make payments as agreed herein.

10. **BILLING STATEMENTS.** As to fees and costs due, Attorney shall send you periodic statements for fees and costs incurred. Client agrees to pay my statements within ten (10) days after each statement's date for all fees accrued after the initial contract. Client may request a statement at intervals of no less than 30 days. Upon request, Attorney will provide a statement within ten (10) days. Unpaid balances shall bear interest at the rate of 12% per annum. In the event of any action to enforce the terms of this agreement or to collect sums due hereunder, you agree that I shall be entitled to recover, in addition to sums owed hereunder, attorneys' fees incurred in maintaining any such action.

11. **LIEN.** Attorneys are hereby given a lien on any and all claims or causes of action that are the subject of attorney's representation under this agreement. proceeds of any recovery. Attorney's lien will be for any sums owing to Attorney for and unpaid costs, or attorney's fees, or interesting in assets recovered, at the conclusion of Attorney's services. This lien will attach to any recovery of money or assets Client may obtain, whether by arbitration award, judgment, settlement or otherwise.

12. **DISCLAIMER OF GUARANTEE.** Client understands that Attorneys have made no promises or guarantees regarding the outcome of Client's claim. Attorney's comments about the outcome of Client's matter are expressions of opinion, only.

Client has read and acknowledges that he understands and agrees to its terms and conditions, and has received a copy of it. There are no other oral or written agreements between client and the Attorneys.

Dated: July 25, 2002

(Client)

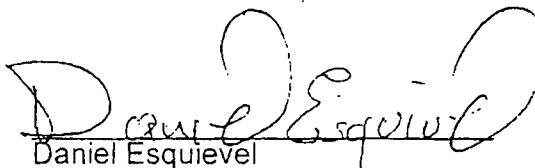
LOS RIELEROS DEL NORTE, INC.



By: Manuel D. Morales,  
President



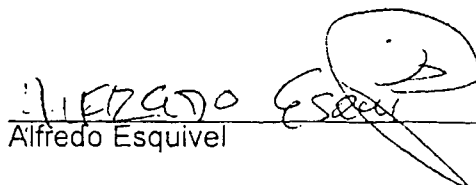
Manuel D. Morales



Daniel Esquivel

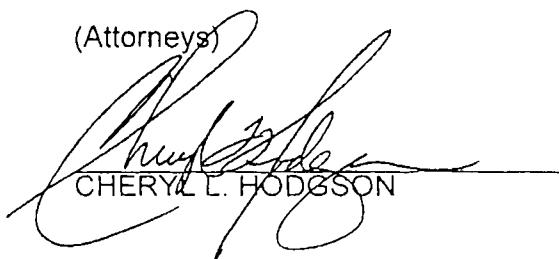


Eugenio Gonzalez



Alfredo Esquivel

(Attorneys)



CHERYL L. HODGSON

| PERIOD ENDING    |  | NAME |
|------------------|--|------|
| TOTAL EARNINGS   |  |      |
| FICA             |  |      |
| U.S.             |  |      |
| INC. TAX         |  |      |
| STATE            |  |      |
| INC. TAX         |  |      |
| MEDICARE         |  |      |
| TOTAL DEDUCTIONS |  |      |
| NET PAY          |  |      |

Los Rieleros Del Norte Inc.  
El Paso, TX 79938

© 1995 American Express

⑈005354⑈ ⑆111000025⑆ 004777959152⑈

ACH 907 111000025

Bank of America



*Cheryl Hodges*  
*Two thousand five hundred & no/100*  
*Home/S. S. Hodges*

PAY TO THE ORDER OF

*Cheryl Hodges*

DOLLARS

\$ 2500.00

DATE

*12/10/02*

Los Rieleros Del Norte Inc.  
12850 Montana Ave. #6  
El Paso, TX 79938

5354

SEP-27/10 TX  
1539

**Cheryl L. Hodgson**  
 Attorneys At Law  
 1875 Century Park East  
 Suite 850  
 Los Angeles, California 90067

Telephone: (310)556-1956 Fax: (310)203-8334  
 E mail: cheryl@backstagelaw.com

Los Rieleros del Norte, Inc.  
 12850 Montana, #6  
 El Paso TX 79938

December 16, 2002

In Reference To: Music Industry Matters

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12/09/2002 CLH Draft release for signature by Javier Parra; fax to client

|                                 |      |                      |
|---------------------------------|------|----------------------|
| Professional Services Rendered  | 0.83 | \$290.50             |
| Previous Balance Forward        |      | \$1,141.12           |
| Interest on overdue Balance     |      | \$0.16               |
| Total Current Charges           |      | <u>\$290.66</u>      |
| 12/16/2002 Payment from account |      | <u>(\$1,431.78)</u>  |
| Payments and Credits            |      | <u>(\$1,431.78)</u>  |
| Current Balance Due             |      | <u><u>\$0.00</u></u> |

|                                  | Current | 30 Days | 60 Days | 90 Days | 120 Days            |
|----------------------------------|---------|---------|---------|---------|---------------------|
|                                  | (35.50) | 35.50   | 0.00    | 0.00    | 0.00                |
| Previous balance of Client funds |         |         |         |         | \$0.00              |
| 12/16/2002 Payment to account    |         |         |         |         | \$2,500.00          |
| 12/16/2002 Payment from account  |         |         |         |         | <u>(\$1,431.78)</u> |

*Probstein, Weiner & Hodgson*

Attorneys At Law

Jon Michael Probstein\*  
Gerald B. Weiner\*  
Cheryl L. Hodgson~

**BY FAX TRANSMISSION**  
**323.722.1575**

November 22, 2002

Mr. Javier Rivera  
Mexico Musical  
6055 E. Washington Blvd., Suite 1000  
Commerce, CA 90040

Re: Contract with Los Rieleros del Norte

Dear Javier:

I understand from Los Rieleros that the group and you have reached an agreement to terminate your representation of the group as of December 1, 2002. The group has asked me to work with you to resolve any outstanding financial issues between you.

I understand that you have advanced the group \$ 300,000 in performance fees pursuant to the contract you entered into on March 17, 2002, and there may be other outstanding items. Manuel Morales has explained that the group has performed a number of dates towards reimbursement but is uncertain as to the exact figures collected for each date, and the amounts credited to the group.

In order to determine the final figure you are still be owed, can you send me an accounting for each of the dates the group has performed, including the gross and percentage revenues on any of the bigger dates? Please note for me the amounts you have credited towards the outstanding advances.

**REPLY TO:**

1875 Century Park East, Suite 850  
Los Angeles, California 90067

Telephone: 310/556-1956

Fax: 310/203-8334

E MAIL: gbweiner@pwandh.com

\*admitted in NY  
\*admitted in NY and CA

~admitted in NY, CA, CO and OR

**NEW YORK OFFICE:**

488 Madison Avenue, Suite 1100  
New York, New York 10022  
Telephone: 212/972-3250  
Fax: 212/794-0373



Mr. Javier Rivera  
Page 2 of 2

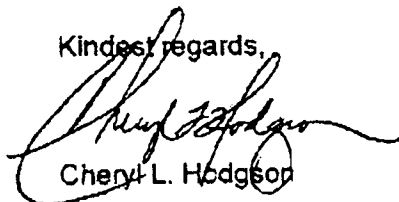
November 22, 2002

It would also be helpful to have copies of all statements you may have received from Fonovisa pertaining the group's recording agreement, and copies of any performance contracts issued by your office.

I look forward to working with you to resolve this matter in a positive manner.

Thank you for your assistance and cooperation in this matter

Kindest regards,



Cheryl L. Hodgson

cc: Los Rieleros Del Norte

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

FIESTA MUSICAL, INC., a Colorado  
corporation; FEDERICO GALINDO,  
an individual; OLGA GALINDO,  
an individual,

Plaintiffs,

v.

LOS RIELEROS DEL NORTE, INC. a  
corporation; DANIEL ESQUIVEL, an  
individual; ALFREDO ESQUIVEL, an  
individual; EUGENIO GONZALEZ, an  
individual; MARIA ESQUIVEL

Defendants.

Case No. EP-06-CA-0098-KC

**PLAINTIFF FIESTA MUSICAL, INC.'S REQUEST FOR PRODUCTION OF  
DOCUMENTS TO DEFENDANT LOS RIELEROS DEL NORTE, INC.**

**(First Set)**

**FRCP Rule 34**

Plaintiffs Olga and Federico Galindo hereby request that the documents defined hereafter be produced by defendant Los Rieleros del Norte, Inc. pursuant to Rule 34 of the Federal Rules of Civil Procedure. The documents shall be produced by plaintiff for copying and inspection at 1610 Colorado Avenue, Suite 200 Santa Monica, CA 90404, within (30) days from the date this Request is received by the attorney for defendant.

**DEFINITIONS**

1. You are required to produce all documents and/or tangible things that are within your possession, custody or control. "Possession, custody or control" includes constructive

possession such that you need not have actual physical possession as long as you have superior right to compel the production from a third party (including an agency, authority or representative) who has the actual possession, custody or control.

2. "Document" and/or "documents" is intended to mean all written, recorded, or graphic matter within the scope of Rule 26(b) and Rule 34(a), Fed. R. Civ. P., including but not limited to papers, books, records, letters, photographs, tangible things, correspondence, communications, telegrams, cables, telex messages, memoranda, faxes, notes, notations, work papers, transcripts, minutes, reports and recordings of telephone or other conversations or of interviews, or of conferences, or of other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, jottings, agenda, bulletins, notices, announcements, advertisements, instructions, charts, manuals, brochures, publications, schedules, price lists, client lists, journals, statistical records, desk calendars, appointment books, diaries, lists, tabulations, programs, data processing input and output, microfilm, books of account, records and invoices reflecting business operations, all records kept by electronic, photographic, or mechanical means, any notes or drafts relating to the foregoing and all things similar to any of the foregoing, however denominated.

3. "You" and "your" shall mean defendant Los Rieleros del Norte, Inc., and its officers, agents, employees, representatives or investigators.

4. The term "person" and "persons" shall include natural persons, as well as corporate entities, partnerships and associations of any kind whatsoever.

5. The term "copy" and "copies" shall have that definition set forth in 17 U.S.C. Section 101.

6. The term "phonorecord" or "phonorecords" shall have that definition set forth in 17 U.S.C. Section 101.

7. The word "plaintiff" whenever it is used in these requests, means the named plaintiffs in this proceeding, to wit, Fiesta Musical, Inc., a Colorado corporation, as well as the individual plaintiffs Olga and Federico Galindo, and also includes and all persons or entities (where applicable) which are predecessors in interest, affiliated with, owned by, or in any other way in privity with plaintiff with respect to any matters inquired about in these requests for production, including but not limited to and all agents, employees, attorneys, consultants, or any other representatives of plaintiff as defined herein.
8. The singular shall include the plural, and the plural singular, whenever the effect of doing so is to increase the information responsive to these requests.
9. "Or" is intended to mean and/or.
10. The terms "refer to" and "relate to" mean consisting of, reflecting or having logical or factual connection with the matter discussed.
11. To "identify" a "person" means to state the person's name and business address, and, in the case of a natural person, his home address and occupation or job title. To "identify" a document means to provide a brief description of the document sufficient to support a request for production, including the general nature of the subject matter, the date, identification of the author and recipient if any, and if the document embodies an agreement, the parties to such agreement. In answer to those interrogatories requiring the identification of any document or documents, such document or documents may be produced for inspection and copying by defendant along with the answers to these Interrogatories in lieu of identification. To "identify" a thing means to provide a brief description of the thing sufficient to support a request for production, including any numbers, markings or other identifying characteristics.
12. To "locate" documents or things means to state the present whereabouts of each document or thing, and to identify the person having possession, custody or control thereof.

13. The word "proceeding" refers and identifies Case No. EP-06-CA-0098 KC, currently pending in the United States District Court for the Western District of Texas.

14. The word "shareholders" as used in these requests for production, refers and identifies the individual defendants DANIEL ESQUIBEL, ALFREDO ESQUIBEL, and EUGENIO GONZALEZ.

15. The word "contracts" or "license agreements" includes all documents, whether written or oral, which establish or tend to support the denial of any request set forth herein.

16. Wherever any request for production uses the expressions "support" or "refer" such expression should be read as the production of any documents that tend to prove or negate any information requested by any particular request.

#### INSTRUCTIONS

1. Should you maintain that any discovery requests contained herein are ambiguous regarding the time frame in which you are to respond, you are instructed to provide a response correct as to the date of your compliance with these discovery requests.
2. If you maintain that a claim of privilege exists as to any of the discovery requests contained herein, you are instructed to fully and completely identify the specific privilege which you are asserting.
3. If you maintain that any exemption(s) exist, pursuant to Federal Rule of Civil Procedure 26(b)(5) or otherwise, you are instructed to fully and completely identify the specific exemption which you claim exists as to these requests for discovery.
4. If you allege that any request contained herein is ambiguous, in any manner, please describe in detail the reasons you claim a request is ambiguous including, but not limited to, each interpretation that you allege the specific request for discovery is subject to. Further, you are instructed to respond to the best of your ability to any discovery request as to each

interpretation that you allege may be given to the discovery request in question. If you object to any of the discovery requests contained herein, you are instructed to identify, with specificity, the specific procedural rule(s) or substantive law upon which you base your objection.

5. Each document, in whole or in part, which you fail or decline to produce because of an assertion that it is privileged or that it is "work product" shall be labeled as "privileged" placed in a sealed envelope/container and filed with the United States District Court for submission and for a camera inspection by the Court to determine the validity of the claimed privilege.

6. Pursuant to Rule 26(e), Fed. R. Civ. P., you are under an affirmative duty to supplement your responses to all discovery with information that you may acquire after filing your written responses, if such information makes it known to you that your previous response was incorrect or incomplete when made, or, if the answer though correct and complete when made, is no longer true and complete and circumstances are such that a failure to amend would be in substance misleading. You are hereby requested to agree to supplement any of your written responses to these discovery requests, and in the absence of any written objection to this request, it will be presumed that you have agreed to do so.

### DOCUMENTS TO PRODUCE

**REQUEST TO PRODUCE NO. 1:** Identify and produce any and all documents, papers or agreements of any nature referring to, or reflecting an agreement for the manufacture, sale or distribution of the phonorecords embodying the performances of the individual defendants, either individually or as members of the group "Los Rieleros del Norte" by third parties, entered into since January 2003.

**REQUEST TO PRODUCE NO. 2:** Identify and produce Identify and produce any and all documents, papers, checks, wire transfers, and/or royalty statements showing amounts received, or due to be received since January 2003 as advances or artist royalties payable to defendant under any third party recording agreement as identified in Request No. 1.

**REQUEST TO PRODUCE NO. 3:** Identify and produce all documents reflecting or referring to, the financial records of the defendant from November 2002 to date, including but not limited to bank statements, profit and loss statements, general ledgers, check registers, deposit records and expenses of defendant.

**REQUEST TO PRODUCE NO. 4:** Identify and produce all documents reflecting or referring to, the amounts paid as salary and/or dividends to the shareholders of the defendant from November 2002 to date, including but not limited payroll reports, federal and state tax deposits, W-2 statements, and checks issued to the individual shareholders.

**REQUEST TO PRODUCE NO. 5:** Identify and produce all documents reflecting or referring to agreements entered into by defendant with third parties, from November 2002 to date, to provide the live performances of the shareholders performing under the name LOS RIELEROS DEL NORTE.

**REQUEST TO PRODUCE NO. 6:** Identify and produce copies of the titles to the vehicles identified in Exhibit A, attached hereto.

**REQUEST TO PRODUCE NO. 7:** Identify and produce copies of all documents reflecting the current title to and the description of any equipment owned by defendant Los Rieleros del Norte, including but not limited to the equipment identified on Exhibit B.

**REQUEST TO PRODUCE NO. 8:** Identify and produce all documents reflecting the sale of any of the items identified by Item 7, including the amount of consideration received therefore, and the name of parties to whom such items were sold.

**REQUEST TO PRODUCE NO. 9:** Identify and produce all documents reflecting agreements among the shareholders relating to the purchase or sale of shares of stock in defendant Los Rieleros del Norte.

**REQUEST TO PRODUCE NO. 10:** Identify and produce all documents pertaining to the corporate status and history of defendant Los Rieleros del Norte, including but not limited to articles of incorporation, minutes, shareholder agreements, resolutions, and meetings of the Board of Directors and Shareholders, from formation to the present date.

**REQUEST TO PRODUCE NO. 11:** Identify and produce any and all documents, papers or agreements of any nature referring to, or reflecting payments from defendant Los Rieleros del Norte to plaintiffs or any of them.

**REQUEST TO PRODUCE NO. 12:** Identify and produce any and all documents, papers or agreements of any nature referring to, or reflecting money received by defendants or its shareholders from plaintiffs or any or any of them.

**REQUEST TO PRODUCE NO. 13:** Identify and produce any and all corporate and state tax returns filed by defendant from 2002 through 2005.

**REQUEST TO PRODUCE NO. 14:** Identify and produce any and all documents, papers or agreements of any nature referring to, or reflecting communications between Manuel Morales and the other shareholders from 2002 to present date.

**REQUEST TO PRODUCE NO. 15:** Identify and produce any and all documents, papers or agreements of any nature referring to or reflecting transfer of the name LOS RIELEROS DEL NORTE to any defendant by any individual shareholder, past or present.

**REQUEST TO PRODUCE NO. 16:** For each document identified in the Interrogatories served on You on even date herewith, produce all documents identifying for each such document the number of the Interrogatory to which such document relates.

Dated: April 18, 2006


THE LAW OFFICE OF DAVID PIERCE  
221 N. Kansas, Suite 504  
El Paso, Texas 79901  
Telephone: (915) 351-9772  
Facsimile: (915) 351-9976

By: 

DAVID PIERCE  
State Bar No. 15992700  
Attorney for Plaintiffs

**CERTIFICATE**

I hereby certify that a true and correct copy of the foregoing instrument was hand-delivered to Enrique Lopez, 2616 Montana, El Paso, Texas 79903, on this 18 day of April, 2006.

  
DAVID PIERCE



### PROMISSORY NOTE

AMOUNT \$340,000.00

Note Dated December 8, 2002

POR VALUE RECEIVED, Los Rieleros Del Norte, Inc., Manuel D. Morales, Alfredo Esquivel, Daniel Esquivel and Eugenio Gonzales ("Maker") promises to pay Federico Galindo and Olga Galindo ("Holder") or subsequent Assignees the Three hundred and forty thousand dollars (\$40,000.00) with interest on the defaulted, unpaid balance only, at the rate of twelve per cent (12%) per annum. The monthly payments of principal shall be due and payable at Twenty Five Thousand Dollars (\$25,000.00) per month for twelve months (12) months, beginning February 1, 2003.

If payments are not made within five (5) days after due date, Maker agrees to pay late charges of five cents (\$.05) per installment dollar past due in addition to the regular installment, but not to exceed the maximum lawful rate allowed by applicable law. Any one or more of the monthly installments may at Maker's option be paid to their respective maturities without penalty.

If any default occurs in the making of any payments hereunder and such default continues for more than five (5) days after written notice thereof, from Holder to Maker, the entire balance of this Note shall become immediately due and payable, plus interest on the unpaid balance, if not already due and payable, at Holder's election expressed by written notice mailed to Maker at Maker's last known place of business.

All parties hereto, including Maker and any endorsers and/or guarantors, hereby waive presentment and all demands and notices in connection with the delivery, acceptance, performance and enforcement of this Note. They consent that time of payment may be extended without notice. Should payment not be made when due or in the event of default, each party shall pay to Holder the costs of collection, including reasonable attorney's fees and cost, plus pre- and post-judgment interest on the unpaid, defaulted balance.

Should for any reason Los Rieleros Del Norte Terminate the management contract and the note is not paid in full the contract will continue to be enforced and the Corporation Los Rieleros Del Norte Inc. with all assets will be security guaranty to this note until the balance is paid in full.

The Maker's obligation is joint and several.

Unless and until notice to the contrary is given by Holder, all payments hereunder shall be sent to: Federico and Olga Galindo, 15188 Madison St., Brighton, CO 80601.

Any assignment for the benefit of creditors by Makers or the institution by or against Maker of any proceedings under the Bankruptcy Act or any other law in which Makers are alleged to be insolvent or unable to pay debts as they mature shall be deemed a material breach and demand and shall render this Promissory Note due and payable immediately.

In the event of any litigation by either party to enforce this Note, the losing party shall in any litigation, reimburse the prevailing party for all reasonable attorney's fees and costs.

#### MAKER

Los Rieleros del Norte, Inc.  
12850 Montana Avenue, Space No. 6  
El Paso, TX 79938

By: Manuel D. Morales  
Manuel D. Morales, President

12/18/2002  
(Date)

The owners and shareholders of Los Rieleros certify that they have had an opportunity to consult counsel of their own choice and obtain a translation of the terms of this Contract and the promissory Note of December 5, 2002, into Spanish. They agree to enter both this Contract and Promissory Note as drafted in English.

TS.00 Signatures.

Los Rieleros del Norte, Inc.

Miguel D. Morales  
Miguel D. Morales, Individually

12/18/2002  
(Date)

Alfredo Esquivel  
Alfredo Esquivel, Individually

12/18/2002  
(Date)

Daniel Esquivel  
Daniel Esquivel, Individually

12/18/2002  
(Date)

Rafael Gonzalez  
Rafael Gonzalez, Individually

12/18/2002  
(Date)

## CONTRACT FOR MANAGEMENT

This Contract for Management ("Contract") is entered between Fiesta Musical, Inc., a Colorado corporation ("Fiesta" or "Manager") and Los Rieleros del Norte, Inc. ("Los Rieleros"), a New Mexico corporation registered in Texas, is entered on this 6<sup>th</sup> day of December, 2002.

### RECITALS.

R1.00 Los Rieleros, an organization of professional musicians, wishes to engage Fiesta to exclusively manage its professional bookings and events.

R2.00 Fiesta wishes to manage Los Rieleros for the term and under the conditions set out below.

### TERMS OF CONTRACT.

T1.00. Term of Contract. This contract is effective December 6, 2002, through December 5, 2005.

T2.00 Responsibilities of Fiesta, the Manager.

2.01 Manager shall book and confirm all professional events of Los Rieleros, in any country, including but not limited to concerts, rodeos, private engagements, and other paid public appearances. The members of Los Rieleros shall assist in bookings to every extent possible; however, the Manager shall have the ultimate authority to book and confirm.

2.02 Manager shall collect all revenues payable to Los Rieleros for the events described herein. Manager shall have the exclusive authority to perform this duty.

2.03 Manager shall disburse all revenues collected, as described in §2.01 to Los Rieleros, after deduction of Manager's commissions and costs described in this Contract.

2.04 Manager shall account for all revenues and disbursements described herein, in a commercially acceptable written format, and report this information to Los Rieleros no less than quarterly.

2.05 Manager shall pay its own taxes and other governmental obligations, personnel costs, overhead, and other costs of doing business, except as set forth in this Contract. Manager shall hold Los Rieleros harmless from any such obligations.

### T3.00 Responsibilities of Los Rieleros.

3.01 Los Rieleros shall maintain the corporation in good standing in New Mexico and Texas for the term of this contract.

3.02 Los Rieleros is exclusively responsible for the reporting and payment of all taxes, fees, penalties, and other governmental obligations of any kind. Los Rieleros shall hold Manager harmless upon any such obligations.

3.03 Los Rieleros shall pay all vendor bills and obligations related to these events. Los Rieleros shall hold Manager harmless for any such obligations.

3.04 Los Rieleros shall hold Manager harmless from all obligations, including judgments, of any kind related to the terms and conditions of this Contract. Los Rieleros shall hold Manager harmless from all obligations, including judgments, related to its former relationships with Mexico Musical, Javier Rivera, and related entities.

3.05 Los Rieleros shall pay all its own insurances, personnel costs and benefits, administrative overhead and costs, and other costs of doing business not otherwise described herein. Los Rieleros shall hold Manager harmless upon any such bills and obligations.

3.06 Los Rieleros shall be responsible to book, secure, and pay for all Los Rieleros' transportation, lodging, meal, and incidental costs of the described professional engagements. Los Rieleros shall hold Manager harmless upon any such bills and obligations.

3.07 Should Manager be named a defendant in any litigation related to a subject for which it has been held harmless in this Contract, Los Rieleros shall pay Manager's attorneys' fees and costs of defense.

3.08 Los Rieleros shall be responsible to reimburse all Manager's transportation, lodging, meal, telephone, Internet, facsimile, and incidental costs of the described professional engagements. Manager is specifically authorized to reimburse itself from Los Rieleros' proceeds collected for any event, as long as an accounting for any such reimbursement, by invoice or other sufficient documentation, is presented to Los Rieleros at the time of reimbursement. Alternatively, Los Rieleros shall pay these amounts within ten (10) days of presentment of invoices or other sufficient documentation.

3.09 Los Rieleros shall pay royalties to Manger as set forth in §4.06.

3.10 Los Rieleros shall make its best faith efforts to perform all booked events in the most professional manner.

#### T4.00. Payment to Manager

4.01 Manager shall exclusively collect and distribute all fees and other compensation paid to Los Rieleros for the professional events which are the subject of this Contract. In every case possible, the Manager shall secure an obligation to pay those fees and other compensation in advance or at the time of performance. Where that is not the case, Manager shall collect and distribute the fees and other compensation immediately thereafter; provided that, if litigation is necessary to secure the fees and other compensation, Manager will undertake such litigation only if Los Rieleros pays the attorneys' fees and costs thereof. Manager shall be held harmless by Los Rieleros from the obligation to pay any uncollectible fees.

4.02 Manager shall be paid a commission calculated at ten per cent (10%) of the gross revenues of every professional event which is the subject of this Contract for the first year, and fifteen per cent (15%) for the second and third years of this Contract. "Gross revenues" are figured before expenses are deducted. Payment shall be paid to itself as soon as collection is accomplished, but in no event more than three days after collection.

4.03 Manager's costs described in §3.08 shall be reimbursed either from Los Rieleros' portion of the gross revenues, in addition to Manager's commission herein described, or if necessary, within the ten (10) days set out in §3.08.

4.04 Manager shall collect and distribute Los Rieleros' portion of its professional fees and other compensation as soon as collection is accomplished, but in no event more than three (3) days after collection.

4.05 Should Los Rieleros refuse or be unable to perform any booked engagement secured by the Manager, Los Rieleros shall pay the Manager ten per cent (10%) of the estimated gross revenues which otherwise would have been produced, plus his actual costs. "Estimated gross revenues" can be calculated based on actual advanced or same-day ticket sales, past attendance records, or other reasonable methods. This amount shall be due and payable within five (5) business days of the date of the scheduled event. Los Rieleros shall hold Manager for any obligations incurred to third parties, including but not limited to, facility rental costs.

4.06 Manager shall receive fifteen per cent (15%) of all royalties accruing to Los Rieleros during the pendency of this Contract. They shall be disclosed to Manager immediately and accounted and paid within ten (10) days of receipt by Los Rieleros.

## T5.00 Termination.

5.01 This Contract shall terminate on December 5, 2005, unless renewed sixty (60) days prior thereto by a sufficient writing.

5.02 Termination for Cause. Upon sufficient grounds, including but not limited to, material breach of terms, bankruptcy or insolvency of a party, theft or fraud related to payments due herein to the parties, related and material criminal conviction, permanent or significantly temporary disruption of the ability to do business, any party can terminate this Contract by giving thirty (30) days' written notice to the other party.

## T6.00 Notices.

6.01 To Los Rieleros: 12850 Montana Ave., Space #6, El Paso, TX 79938

To Fiesta: 15188 Madison St., Brighton, CO 80601

6.02 Notices shall be sent by first class mail, sufficient address and postage affixed.

## T7.00 Miscellaneous Provisions.

7.01 This Contract is the complete agreement of the parties. No verbal amendments or revisions shall be enforceable to alter its terms. All amendments must be in writing agreed and signed by the parties.

7.02 Should this Contract result in litigation between the parties, the prevailing party's reasonable attorneys' fees and costs shall be paid by the losing party. This Contract shall be governed under the laws of the State of Colorado. The situs of any litigation shall be Adams County, Colorado.

7.03 The terms of this Contract are severable and if any part is deemed invalid, the remainder remains in full force and effect.

7.04 The parties agree to grant each other reasonable access to each other's financial statements and records, within ten (10) days of written request.


7.05 Los duenos y miembros de la corporation Los Rieleros certifican que tuvieron la oportunidad de consultar con abogados de su preferencia y obtener una interpretacion de los terminus de este contrato y nota de promesa de pago de Decembre 5, 2002, en espanol. Ellos estan de acuerdo con el contrato y nota de promesa de pago original escrita en el idioma ingles.

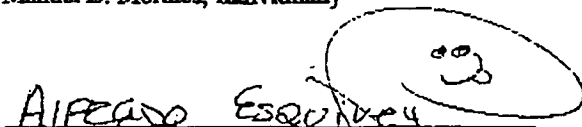
[The owners and shareholders of Los Rieleros certify that they have had an opportunity to consult counsel of their own choice and obtain a translation of the terms of this Contract and the Promissory Note of December 5, 2002, into Spanish. They agree to enter both this Contract and Promissory Note as drafted in English.]


T8.00 Signatures.

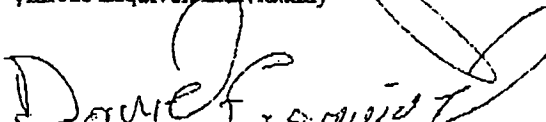
Los Rieleros del Norte, Inc.

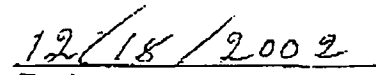
  
Manuel D. Morales, Individually

  
(Date)

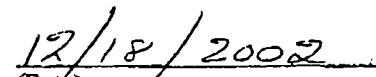
  
Alfredo Esquivel, Individually

  
(Date)

  
Daniel Esquivel, Individually

  
(Date)

  
Eugenio Gonzales, Individually

  
(Date)





**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**FIESTA MUSICAL, INC.**, a Colorado corporation; **FEDERICO GALINDO**, an individual; **OLGA GALINDO**, an individual,  
Plaintiffs.

**y.**

CIVIL ACTION  
NO. EP-06-CA-0098 KC

**LOS RIELEROS DEL NORTE, INC.** a corporation; **DANIEL ESQUIVEL**, an individual; **ALFREDO ESQUIVEL**, an individual; **EUGENIO GONZALEZ**, an individual; **MANUEL MORALES**, an individual; **MARIA ESQUIVEL**,  
**Defendants.**

**REPLY BRIEF OF DEFENDANTS LOS RIELEROS DEL NORTE, INC.,  
DANIEL ESQUIVEL, ALFREDO ESQUIVEL AND EUGENIO GONZALEZ  
IN SUPPORT OF MOTION TO DISQUALIFY CHERYL R. HODGSON**

Defendants and movants Los Rieleros del Norte, Inc., Daniel Esquivel, Alfredo Esquivel and Eugenio Gonzalez, by and through their attorney, Enrique Lopez, submit this Reply Brief in Support of their Motion to Disqualify attorney Cheryl R. Hodgson as attorney for the plaintiffs in this action.

Plaintiff's complaint presents two distinct claim subjects, i.e. Galindo's claims directly against Defendants on the note and management contract, and Galindo's claims against Defendants as the purchaser and assignee of claims and rights of former shareholder and performing member Manuel (Manolo) Morales against the Los Rieleros defendants herein.

With respect to the second category of claims, evidence of Manolo's rights and claims as a shareholder and performing member of the corporation and musical group professionally known as Los Rieleros del Norte is of key importance in sustaining Plaintiff's claims as an

assignee's rights are only as good as the assignor's rights.

Despite the importance of the historical interrelationships between Manolo and the defendants in this case, and Ms. Hodgson's retainer reference to providing counsel as to "Corporate matters including shareholder agreement," there is nary a mention of this subject in the opposition. Ms. Hodgson does however indirectly offer evidence on this point with her observation that at a meeting with the group on or about November 21, 2002, her attempts to discuss corporate matters met with indifference to the entire matter. [Hodgson Declaration, July 7, 2006, Para 7(i).]

While possessed with this percipient knowledge of the group's lack of focus on corporate affairs, plaintiff now seek discovery of "agreement among the shareholders relating to the purchase of sale of share of stock in defendant Los Rieleros del Norte" (Doc. Req. 9, Appendix, p. 16); "documents pertaining to the corporate status and history of defendant Los Rieleros del Norte....." (Doc Req. 10, Appendix, p. 16); and "documents---reflecting communications between Manuel Morales and the other shareholders from 2002 to present date." (Doc Req. 14, Movant's Appendix, p. 17). Within the timeframe of the request, Ms. Hodgson already knows that the group did not have a shareholder agreement. In addition, Ms. Hodgson is also privy to their conduct, statements and actions relevant to this subject. The case documents and counsel's own admissions conclusively establish a substantial relationship between the subject matter of the present and former representations.

Even beyond the fact of her personal knowledge as attorney for defendants concerning relevant issues, Ms. Hodgson has obtained disclosures from one of her clients, Manolo, to use against her other clients, the Los Rieleros defendants. She initially met with the Galindos and Manolo in November 2005 (coincidentally, the month of the assignment from Manolo to

Galindo),<sup>1</sup> [Hodgson Dec., Para 4], had pre-suit "discussions" with Manolo [Hodgson Dec., Para 12] and the Fifth and Sixth Claims in the complaint are based upon information disclosed to Ms. Hodgson by Manolo and the Galindos since November 2005. [Opposition, Page 9] Ms. Hodgson is in effect representing one former client in a suit against another client involving, in part, the subject of her representation.

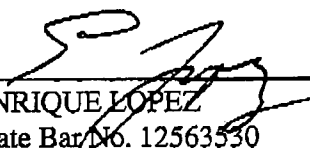
### CONCLUSION

Ms. Hodgson admits that she has acquired knowledge relevant to the case in the course of her 2002 representation of the current defendants. Ms. Hodgson is further in the position of representing a former client against another client using the confidences previously acquired. Ms. Hodgson acknowledges that the entire situation smacked of conflict from the get-go, occasioning a call to a legal ethics adviser. While his or her approval is implied, the present disclosures clearly establish that the advisor's comments (whatever they may have been) were either erroneous or based upon incomplete information. The present record precludes Ms. Hodgson from continuing as counsel to any party in this case or in any related matter.

Respectfully submitted,

*ANTONIO V. SILVA, P.C.*

Dated: July 20, 2006

  
ENRIQUE LOPEZ  
State Bar No. 12563550  
2616 Montana Avenue  
El Paso, TX 79903  
Telephone: (915) 564-5444  
Facsimile: (915) 564-4413  
Email: [elopez@silvalawpc.com](mailto:elopez@silvalawpc.com)

Attorneys for Defendant

<sup>1</sup> If Manolo is not Ms. Hodgson's client, Ms. Hodgson would likely be called to testify as to all transactions and conversations that she witnessed in the presence of Manolo and Galindo, further disqualifying her as counsel, as she is a potential witness in the case on substantive issues.

**COPY**

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WESTERN DISTRICT OF TEXAS  
BY [Signature]  
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www.pearsoned.com

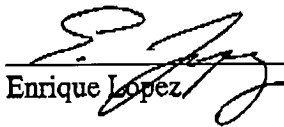
CIVIL ACTION  
NO. EP-06-CA-0098 KC

www.pearsoned.com

### Certificate of Mailing

**CERTIFICATE OF SERVICE**

I certify a true and correct copy of the foregoing was sent by regular mail and facsimile to David Pierce, Esq., 221 N. Kansas, Suite 504, El Paso, Texas 79901, fax: 915-351-9976, and via certified mail to Ms. Cheryl Hodgson, Esq., 1610 Colorado Avenue, Suite 200, Santa Monica, California 90404-3313, on the 20<sup>th</sup> day of June 2006,.

  
Enrique Lopez

**Antonio V. Silva**

A Professional Corporation

Attorneys at Law

2616 Montana Ave.

El Paso, Texas 79903

**HAND DELIVERY RECEIPT**

TO: David Pierce, Esq.  
221 N. Kansas, Suite 504  
El Paso, TX 79901

Re: Reply Brief of Defendants, In Support  
of Motion to Disqualify Cheryl R.  
Hodgson. (Bundle)  
Fiesta Musical Inc, et al. vs. Los Pieleros

I hereby certify that I have received Pls see "Re:" &  
Amended Answer & Counterclaim

on this the 20th day of July, 2006 in the  
above-captioned matter.

By: X [Signature]  
Position: Legal Asst.


Delivered by: M. Sullivan Date: \_\_\_\_\_ Time: \_\_\_\_\_

Please return signed copy to \_\_\_\_\_

Client/Matter #(s) \_\_\_\_\_ Mileage: \_\_\_\_\_

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been hand-delivered to David Pierce, 221 N. Kansas, Suite 504, El Paso, Texas 79901, fax: 915-351-9976, and sent certified mail Ms. Cheryl Hodgson, Esq., 1610 Colorado Avenue, Suite 200, Santa Monica, California 90404-3313, to on this 20 day of July 2006.

  
ENRIQUE LÓPEZ





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IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

FILED

2006 AUG 15 AM 10:20

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
DEPUTY

FIESTA MUSICAL, INC., a Colorado §  
corporation; FEDERICO GALINDO, §  
an individual; OLGA GALINDO, §  
an individual, §  
Plaintiffs, §  
**RECEIVED** §

v.

AUG 10 2006

CIVIL ACTION  
NO. EP-06-CA-0098 KC

CLERK, U.S. DISTRICT COURT §  
WESTERN DISTRICT OF TEXAS §  
BY DEAN CLEGG §  
LOS RIELEROS DEL NORTE, INC., a §  
corporation; DANIEL ESQUIVEL, an §  
individual; ALFREDO ESQUIVEL, an §  
individual; EUGENIO GONZALEZ, an §  
individual; MANUEL MORALES, an §  
individual; MARIA ESQUIVEL, §  
Defendants. §

**ORDER ON DEFENDANTS' MOTION TO DISQUALIFY CHERYL R. HODGSON**

On this day, this matter having come before the Court on Defendants Los Rieleros Del Norte, Inc., Daniel Esquivel, Alfredo Esquivel and Eugenio Gonzalez's Motion to Disqualify Cheryl R. Hodgson, and the Court having considered the motion, evidence, and the arguments of counsel, if any, and being otherwise being fully advised in these premises finds the motion is well taken and should be GRANTED.

IT IS THEREFORE ORDERED that Defendants' Motion to Disqualify Cheryl R. Hodgson is GRANTED.

SIGNED this 15th day of August, 2006.

  
HONORABLE KATHLEEN CARDONE  
UNITED STATES DISTRICT JUDGE